TRANSCRIPT OF RECORD.

IN THE

Supreme Court of the United States

October Term, 1925.

No. 512

UNITED STATES OF AMERICA,

Appellant,

v.

THE CHEMICAL FOUNDATION, INCORPORATED,

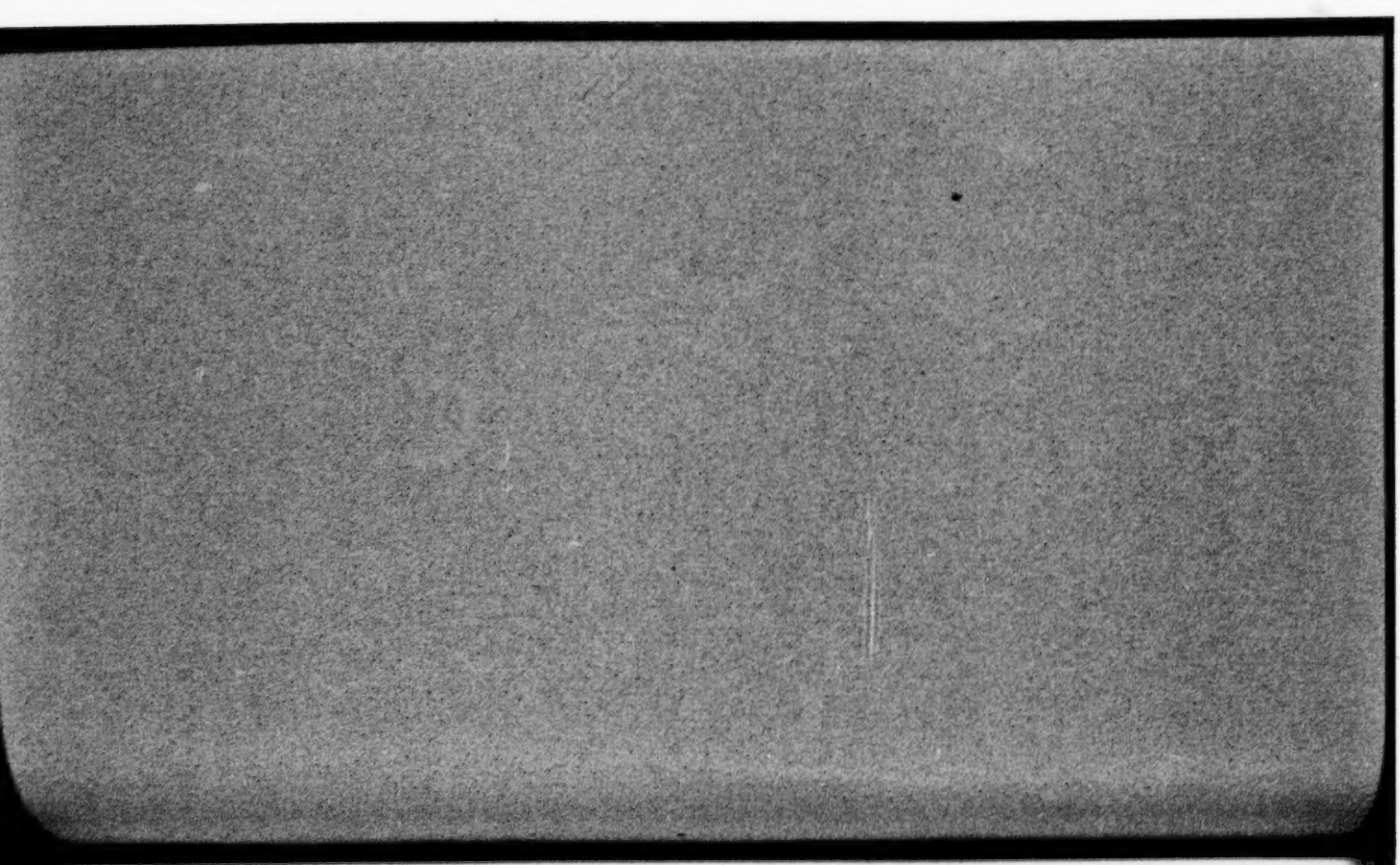
Appellee.

Volume III.

TESTIMONY.

(Pages 1001 to 1510 inclusive.)

APPEAL FROM THE UNITED STATES DISTRICT COURT OF APPEALS
FOR THE THIRD CIRCUIT.



NINTH DAY.

Wilmington, Delaware,
June 14th, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:
HON. HUGH M. MORRIS. *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. GALLOWAY: The plaintiff next offers in evidence a letter dated February 5th, 1919, from the Assistant Director of the Bureau of Trusts of the Alien Property Custodian's office to the Pacific Flush Tank Company. We are beginning now, if your Honor please, on some of these isolated instances where properties were sold by the Alien Property Custodian to The Chemical Foundation, concerning which there has been previous inquiry, which we think bear on the question of value as well as the regularity of the Trustee's Sale.

THE COURT: This is from whom to whom?

MR. GALLOWAY: This is from the Assistant Director, Bureau of Trusts, Alien Property Custodian, to the Pacific Flush Tank Company, Chicago, Ill., who it will be shown later received an agency contract from The Chemical Foundation, Incorporated.

THE COURT: Is there objection, Mr. Kresel, or did your general objection——

MR. KRESEL: I understand this is subject to our general objection.

THE COURT: It is subject to your general objection.

MR. GALLOWAY: Your Honor, we ask to introduce this in evidence and ask that it may be read as Plaintiff's Exhibit No. 158. It is stipulation No. 150.

THE COURT: It may be admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 158." (*See Exhibits, Vol. I, page 376.*)

MR. GALLOWAY: This letter is in reply to a letter of January 29th, written by the Pacific Flush Tank Company and is concerning a request by them for a deduction of five hundred dollars from the royalties owing on a contract with the enemy which had been seized by the Custodian. There had been five hundred dollars paid to the Federal Trade Commission by the Flush Tank Company for a license from the Commission, and the Alien Property Custodian's office states that they may file their claim for that, but they can not deduct it from the license fees.

MR. GALLOWAY: Plaintiff next introduces or offers in evidence, a letter dated February 12, 1918, addressed to F. J. Horn, Assistant Director, Bureau of Trusts of the Alien Property Custodian, from the Federal Trade Commission, signed by L. L. Bracken, Secretary, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 159.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 159." (*See Exhibits, Vol. I, page 377.*)

MR. GALLOWAY: This letter states that the impression of the Commission is that the $500 license fee might be chargeable to the enemy, and

they ask for an expression of views of the Custodian's office.

THE COURT: The letter is from whom to whom?

MR. GALLOWAY: The letter is from the Secretary of the Federal Trade Commission to the Alien Property Custodian.

MR. KRESEL: I have not raised any specific objection to this exhibit and the one that preceded it. I must say that upon reading them, I do not see the relevancy of them at all. There was some question about returning a license to somebody, and the Federal Trade Commission thought one way and——

THE COURT: In order to save time, I will say to you, Mr. Kresel, that I do not either. But I think the Attorney General should be at liberty to put on this record every document, paper or record which the Attorney General's office deems that they can make any use of in any way whatsoever; but I do not see the relevancy. If the power existed in the President and the Alien Property Custodian to make a sale, then they necessarily must have used some judgment about it, and whether their judgment and discretion is subject to judicial review is one of the questions in this case raised by you; and so, under the circumstances, I do not see they are relevant or material or pertinent to the issues in this case.

I shall admit them in order that the Attorney General may make such record in this case as he deems should be made.

MR. GALLOWAY: Plaintiff next offers in evidence a letter signed by E. L. Bennett, for the League of Minnesota Municipalities, addressed to Mr. A. Mitchell Palmer, Alien Property Custodian, dated March 13, 1918, with reference to the

patents of which we have just been speaking, commonly called the "Imhoff patents," and ask that it may be read in evidence as Plaintiff's Exhibit No. 160.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 160." (*See Exhibits, Vol. I, page 378.*)

MR. GALLOWAY: I wish to read some excerpts from this letter, if your Honor please.

THE COURT: Yes.

MR. GALLOWAY: This letter, to the Alien Property Custodian by the League of Minnesota Municipalities, states in part as follows (reading from Plaintiff's Exhibit No. 160).

THE COURT: Won't you be good enough, Mr. Galloway, to help me with that, for apparently I am missing the point of that letter and I am sure that you have some purpose in introducing it and that the purpose is relevant to the issue. But in order that you may see the difficulties I am in, it looks to me as if you are contending now that the Government or the Alien Property Custodian or Mr. Polk or the President of the United States should not have sold these patents or some of them or all of them for $250,000, but should have given them away. Surely, that is not your contention.

MR. GALLOWAY: If your Honor please, we shall follow this with correspondence which shows in substance the following facts: that following this letter there were other letters which show that the enemy had licensed the patent to an American Corporation called The Pacific Flush Tank Company. The license by the Federal Trade Commission will show that the Commission had also licensed that Company. The evidence will further show that the Pacific Flush Tank Company made

an offer to the Alien Property Custodian's office to purchase these patents for two thousand dollars cash and immediately dedicate them to the use of the American public.

The evidence will further show, by memoranda from the office of the Alien Property Custodian, that there was at that time the sum of approximately $27,000 in royalties due upon this set of patents, which I think consists of four; and this is in a way preliminary to show that it was the desire and purpose of the public to get these for their own use and that the Alien Property Custodian had an opportunity to do that, but did other things with them. We feel that that is material to point out the question of value and the question of whether or not it was a sale in the best interest of what we contend is a trust estate and perhaps the question of whether or not the public interest had been best safeguarded. The latter, perhaps, is a minor consideration in comparison with the others. Do I make myself clear?

THE COURT: Yes.

MR. GALLOWAY: Plaintiff next offers in evidence a letter from E. L. Walcott, Vice-President of the Pacific Flush Tank Company to A. Mitchell Palmer, Custodian, dated March 20th, 1918, and asks that the same be read in evidence as Plaintiff's Exhibit No. 161.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 161." (*See Exhibits, Vol. I, page 381.*)

MR. GALLOWAY: This letter being a letter from the Pacific Flush Tank Company to A. Mitchell Palmer, Alien Property Custodian, dated March 20th, 1918—I might also state to your Honor that an examination of the exhibits in the Bill will

show that this correspondence occurred prior to the assignment to The Chemical Foundation—states that a Secret Service Officer of the Naval Intelligence Department called on the Pacific Flush Tank Company (reading further from Plaintiff's Exhibit No. 161).

The plaintiff next offers in evidence a memorandum to Mr. Horn from R. C. Goldstein, Division of Patents, dated March 22, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 162. I think, Mr. Kresel, if it does not already appear of record, that it will be perhaps conceded that Mr. Horn was an officer of the Alien Property Custodian and so was Mr. Goldstein.

MR. KRESEL: It is so conceded. I do not know that you would call them officers.

MR. GALLOWAY: They were at least employees.

MR. KRESEL: I am informed Mr. Horn was the Director of the Bureau of Trusts and Mr. Goldstein was an employee there.

MR. GALLOWAY: I think that is quite right.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 162." (*See Exhibits, Vol. I, page 382.*)

(Mr. Galloway then read Plaintiff's Exhibit 162.)

THE COURT: That is from whom to whom?

MR. GALLOWAY: That was from Mr. Goldstein of the Patents Division to Mr. Horn, the Assistant Director of the Bureau of Trusts of the Alien Property Custodian's office.

THE COURT: If you do not mind helping me just a little bit, how many patents were involved in that, Mr. Galloway?

MR. GALLOWAY: My recollection is there were four. Am I correct, Mr. Boggs?

MR. BOGGS: I have not the data before me from which I can check that.

THE COURT: Then without regard to the number, is the only purpose of this evidence—I can not say without regard to number, but is the purpose of this evidence to indicate that the Government had a better offer for these patents, financial offer for these patents, than was made to it by The Chemical Foundation?

MR. GALLOWAY: That is one of the purposes, your Honor, yes.

THE COURT: And the other purpose is what?

MR. GALLOWAY: The other purposes are to show that this was not—well, I see that the other purposes are perhaps connected with the one that you have just suggested, that the sale was not in the interest of the trust estate which we contend the Alien Property Custodian represented.

THE COURT: Will you tell me what you mean by the Trust Estate?

MR. GALLOWAY: Your Honor, I felt it was made fairly clear in the opening statement.

THE COURT: Yes, I think it was, but I may have lost it.

MR. GALLOWAY: I am quite willing to repeat it, and I wish to state that what I am saying now is in accordance with my conception of what Colonel Anderson stated, and I think we are in agreement on it—that our theory is that the Alien Property Custodian holds this property as Trustee for a beneficiary to be determined by Congress and which will be determined by Congress in accordance with the terms and provisions of the Trading with the Enemy Act, and that he now holds it as Trustee, and that the proceeds as well as the

property in kind prior to sale is trust property in his hands in a fiduciary capacity.

THE COURT: Was he precluded by the terms of that Trust from considering the general welfare of the United States of America and its people?

MR. GALLOWAY: I do not think that he was entirely, except in this: In this instance, if your Honor please, our contention is that they had an opportunity to effect and accomplish the same results which they desired to accomplish, and perhaps more so, relieving the public entirely from royalties.

THE COURT: And then you are asking the judicial department to review, if there was a discretion in the matter, the policy or the judgment of the Executive Department as to whether that was or was not for the general interest or for the best interests of the United States or its people.

MR. GALLOWAY: We question, your Honor, whether the Alien Property Custodian himself had any discretion to exercise, but that it was his duty to handle this property as a Trust Estate absolutely.

THE COURT: Then, that is where you cause difficulty in my mind. The minute that you say that under a private sale something other than monetary return could be considered, then that was a question of judgment or discretion there involved, was it not?

MR. GALLOWAY: We are not contending here so much that other than monetary consideration should be considered, but if the Court feels that it should be, we think the facts of this instance are sufficiently strong to show that they were not considered.

THE COURT: You may proceed.

MR. GALLOWAY: I find there are five of these, your Honor, five patents.

THE COURT: But do you contend that if the Executive Department was empowered to consider other things, the Judicial Department may review its consideration of those other things and the judges determine for themselves what was for the best interests of the country and review the power of the Executive Department in that respect? I am afraid those things will not reconcile; will they, Mr. Galloway?

MR. GALLOWAY: Well, I think the contention which the Government has already advanced has been that the Judicial Department of the Government does have the right to review the acts of the Executive in the administration of a delegated power.

THE COURT: A Congressional delegation of power?

MR. GALLOWAY: A Congressional delegation. Perhaps not in a political power, but in an administrative power, yes. That was the contention of the Government.

THE COURT: As I understood Colonel Anderson, so far as the Executive exercise of constitutional power is concerned, the judiciary may say nothing, but so far as the President is exercising a power conferred upon him by Congress, then the judiciary may review and determine for itself whether there has been a proper exercise of that power and may go further to determine when the power existed and may determine whether there was a proper exercise of that power. That is, as I understand, your position.

MR. GALLOWAY: I think that your Honor is right so far as the last is concerned, that in respect of the exercise of a power delegated by an

Act of Congress, the judiciary has the right of review. There may be certain exceptions even to the Constitutional powers, depending upon the nature of the power, that I do not think it is necessary for us to consider at this time.

THE COURT: I am having difficulty right there, and I do not see how, unless these documents bring it clearly before me, how it is possible for me sitting as a Judge to determine what was for the best interests of the country, if that power existed. Now then, if you establish that in the exercise of this power and the exercise of this Trust, it was the duty of the Executive to obtain the highest possible dollar for these patents, of course that is a question that may possibly be determined. But the minute you concede, which you do not concede, as I understand you, that the Executive should take into consideration in the performance of this Trust, in selling these patents, not only whether he was getting the most for them but the general welfare of the country, that is a subject that I do not just understand.

MR. GALLOWAY: Of course, it is my understanding that the situation in this case has developed so that it is first the question of power that must be decided.

THE COURT: Undoubtedly.

MR. GALLOWAY: And then after the question of power has been decided, if it should be decided, which we do not concede of course, that the power does exist in the President to do these things, then the question of the review of his discretion.

THE COURT: No doubt about it.

MR. GALLOWAY: That was my theory of the case.

THE COURT: But these documents raise clearly the question of review of Executive discretion.

MR. GALLOWAY: We also think, your Honor, that if the question of power should be decided—that he did not have the power——

THE COURT: Then we stop there. Then these are immaterial.

MR. GALLOWAY: We think we want to at least prove questions of value and we think that these are admissible at least upon that if not upon other grounds. They may be admissible, your Honor, upon a further ground that I would like to call your attention to, and that is this: to show that all of the facts were not brought to the attention of the Executive when he attempted to exercise this power.

The next letter, your Honor—and I shall shorten these as much as possible in order to get the facts before the Court—which the plaintiff offers in evidence is a letter dated January 9th, 1919, to A. Mitchell Palmer, Alien Property Custodian, signed by S. Fisher Miller, President of the Pacific Flush Tank Company. We ask that the same may be read in evidence as Plaintiff's Exhibit No. 163. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 163." (*See Exhibits, Vol. I, page 386.*)

MR. GALLOWAY: Plaintiff next offers in evidence a memorandum to Judge Broadhead from Mr. Goldstein, dated February 18, 1919.

Mr. Kresel, I think perhaps, for the Court's information, you would stipulate that Judge Broadhead and Mr. Goldstein were both employees of the Alien Property Custodian's office.

MR. KRESEL: Yes, we will concede that, your Honor.

MR. GALLOWAY: —And asks that the same

may be read in evidence as "Plaintiff's Exhibit No. 164."

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 164." (*See Exhibits, Vol. I, page 388.*)

MR. GALLOWAY: I am not going to read all this; just a certain portion of it.

THE COURT: Does that disclose any facts which you think the President should have had before him?

MR. GALLOWAY: This discloses the further fact, on the question of value, if your Honor please, that up to this time there was approximately $27,000 due for royalties for use of this patent.

MR. MAHAFFY: What letter is that?

MR. GALLOWAY: I am just trying to find it here, Mr. Mahaffy.

I think, your Honor, that I was in error in stating that that document showed that there was $27,000 in royalties; that it is the next one which I am coming to here.

THE COURT: Are you still dealing with the flush tank?

MR. GALLOWAY: With the Pacific Flush Tank.

MR. KRESEL: Do I understand that it is the claim of the Government that there was $27,000 that had actually been collected and was waiting for somebody to take?

MR. GALLOWAY: No, we do not contend that it had been collected and was waiting for anyone to take. We contend that there was due upon this patent the sum of $27,483 for royalties.

MR. KRESEL: You do not contend that it had actually been collected? You know the contrary

to be true, do you not, that it could not be collected?

MR. GALLOWAY: This letter will show that there had been $6,000 already collected.

MR. KRESEL: Now you are going to another figure and I am talking of this one figure $27,000.

MR. GALLOWAY (continuing): Leaving uncollected $27,483.

MR. KRESEL: Yes, but I am asking you whether you will not concede that that $27,000 you are talking about not only had not been collected but never was collected, could not be collected and has not been collected to this day.

MR. GALLOWAY: If that is a fact we are prepared to concede it, of course; but I am not informed of the fact upon that, Mr. Kresel. Our contention is that the royalty which was due goes to the question of the value of the patent rather than what was actually paid into the Alien Property Custodian's office under it—whatever it earned.

MR. MAHAFFY: My thought was, the Exhibit 162, a letter from Mr. Goldstein to Mr. Horn, being substantially the same in substance as this letter, that counsel might not desire to duplicate the matter.

THE COURT: As I understand Mr. Galloway's position it is that this act of the President in signing the Executive order would have been invalid if the Alien Property Custodian had failed to present to him the facts disclosed by these letters or any of them.

MR. MAHAFFY: Yes, I understand that.

MR. ANDERSON: I was not here at the time Mr. Galloway made his statement and I do not know what took place, but there is an additional fact that even assuming that the sale was authorized,

it must be a sale for a fair consideration, and whether that is a sound position or not the Alien Property Custodian, who was the authorized officer to sell, had no power to sell except at a fair consideration either at private or public sale, and therefore this evidence goes to the question whether or not it was a fair sale.

THE COURT: Let me see if I understand you. I do not want to bring about an argument of the case, necessarily, with these documents, Colonel Anderson, but I try to determine for myself as each document is presented whether I am going to consider that in the future or not.

MR. ANDERSON: Certainly, sir.

THE COURT: I will consider it if you point out in your brief or in your future argument that it has any value.

MR. ANDERSON: Of course.

THE COURT: And I would like to know whether you and Mr. Galloway disagree with respect to the documents.

MR. ANDERSON: No, sir.

THE COURT: I want to know if you do. You are aware of Mr. Galloway's position?

MR. ANDERSON: I was not in the courtroom when Mr. Galloway made his statement and I merely meant to supplement his statement with the further reason for this evidence and for its admissibility.

THE COURT: It seems to me this group of exhibits presents this question which I will state, and probably I can get enlightenment here much better than I can in dealing with this particular point in a day's argument by you later. This is dealing with what you call the flush tanks?

MR. ANDERSON: Yes.

THE COURT: The flush tank patents. Much of

this documentary evidence deals with a request that they be donated to the American public or seized by the Government and dedicated to the American public so that any city or municipality may use these devices for the general public welfare and public health, without the payment of a royalty. That presented the question, assuming the power—which of course is the first bridge we have got to cross.

MR. ANDERSON: Of course.

THE COURT: But assuming the power —as to whether those things are relevant; whether the interpretation desired to be put upon them by the Attorney General is that the President should not have so authorized the private sale. Because this was a private sale. That is why I refer to the President. I understand the sale as such is a Custodian matter and the private sale —

MR. ANDERSON: The authority to make a private sale.

THE COURT: Yes, the authority to make a private sale, is a President matter. If he can dedicate them, seize them and dedicate them to the American public under this act, then it indicates that the President in disposing of these patents could take into consideration matters other than the financial return therefor.

Now then, in discussing that, Mr. Galloway said another point that he thought was supported by this documentary evidence was that they disclosed facts which were not called to the President's attention at the time he signed this order.

MR. ANDERSON: Does you Honor desire me now to answer your question?

THE COURT: I will get you to help me on this, if you will, and that is whether you differ with Mr. Galloway on the last point, and if you do

whether it is your contention that all files of the Alien Property Custodian with respect to these patents would not only have to be represented to the President but read by him befre he could sign the Executive order, the Executive order for private sale.

MR. ANDERSON: I will try to just summarize the position.

THE COURT: Yes.

MR. ANDERSON: Without argument at all. In response to your Honor's question, I would say first that we do not contend that either the Alien Property Custodian or the President had the power to dedicate any property to the public use; and that this correspondence (of which I do not know exactly how far the reading has gone), will, when completed, demonstrate that the offer of the Flush Tank Company was to purchase them for $2,000, and dedicate them itself, which of course it would have a right to do after they had purchased them. That is a private act of a person dedicating his own property to the public interests.

Now, second, we do not contend that the President would have to read over all the correspondence in every instance in entering an order authorizing a private, as distinguished from a public sale, but we do contend that the material facts as to that particular property to be sold, or any of it, must be brought to the attention of the President, to the end that he may state his reasons in the public interests as required by the Act, and that if such material facts were not brought to the attention of the President, then he would act upon a mistake or incomplete statement of the facts, or guess, as the Court said in the Barlow case, and his act, although with the best intention, would have been invalid.

In the second place, we most earnestly contend that the President has not the power to sell except for a fair consideration, and that the fact that there were existing circumstances as to various patents or groups of patents, all of which were sold under circumstances indicated in this evidence, in a group, without taking up the particular facts as to each group or presenting the material facts as to each, is an evidence of a confusion of action which would not only make impossible the exercise of the discretion by whoever it was to be exercised by, as contemplated by Congress and carefully guarded by courts, but would make impossible the sale of what we contend was a trust estate in accordance with the rules of law controlling the sales of trust estates. Of course, your Honor, I need not state those are some of the answers to your Honor's question. They go first to the question of the exercise of a discretion to make a private sale; second, to the character of the sale, and nothing is more general than the facts entering into whether a sale by a trustee is a fair sale or an unfair sale; that is, whether it is a proper sale; and the courts guard that very carefully.

Now, in the third place, it goes to the question of the value of these patents, as showing not only that they had great value even with the public interests fully protected and with the public interest advanced by dedication to the use of the cities, but that they had a great value in themselves.

Those are some of the reasons that occur to me off-hand, why these papers should be put in, and you will notice that they bear upon substantially every important and vital issue in this case.

MR. KRESEL: Does your Honor desire me to take that up?

THE COURT: No, thank you, Mr. Kresel.

MR. ANDERSON: Of course your Honor understood me to include in my statement with respect to the President directing that a private sale might be made, that even if he directed the sale, he had nothing to do with the trust, but that the Trustee or the Alien Property Custodian would then have it.

THE COURT: I missed that comment, Colonel Anderson.

MR. ANDERSON: If the President directed a sale, I take it the question would have nothing to do with the question of price, but that the President would direct that the circumstances justified a private sale and the sole power is vested in the Alien Property Custodian who would have to exercise that power in making a private sale, just as he would in a public sale to get a fair price.

THE COURT: And that the general welfare of the country could not be taken into consideration at all in making such sale.

MR. ANDERSON: I do not say that it could not be taken into consideration, but the reasons therefor would have to be stated in the Presidential order, or by whoever signed it, the reasons in the public interest. All he could do then was merely to authorize a private sale as distinguished from a public sale and then the Alien Property Custodian would have to make that private sale under such rules and regulations as the President may prescribe, for a fair consideration, as he would have to sell any other trust property or Government property.

THE COURT: Let me see if I understand you

just this far, Colonel Anderson, because I think you can help me now.

Assuming that the actual value of all this group of patents was $17,000,000. Assume that that is a fact.

MR. ANDERSON: Yes.

THE COURT: And the Executive Department or branch of the Government acting under a power conferred upon it by Congress—we will assume the existence of this power for this question — determines that a condition has arisen under which the country will be greatly benefiited and possibly its independence preserved by a specific act, namely, by the sale of these patents for a sum of $250,000 to the Chemical Foundation, Incorporated; that thereby, should future wars arise, they will be in a position to be independent chemically from any foreign power, that America will be in a position to develop the chemical science commercially and thus put it in a position to have the Government better protected than it would be if the Government directed only its own energy to the development of the chemical science; and that there could be no question, viewed from that standpoint, but that this disposition of the patents was the wisest one possible. Then do you contend that the Executive was required to offset against that the number of dollars and cents under this act?

MR. ANDERSON: Your Honor has gone to the root of one of the most important issues in this case, as your Honor of course realizes. At the proper time I shall present authorities to support what I am going to say.

Your Honor has in your question followed the method of the greatest of all Chief Justices, Chief Justice Marshall, in assuming a premise

which I cannot concede without conceding the possibility of a conclusion which I would have to deny.

In the great Dartmouth College case, if anybody reads the opinion, once you assume the premise, you cannot come to any other conclusion. But the question is as to the premise. Therefore, if I may answer your Honor's question this way:

If you concede the power to do the things which your Honor has indicated in the President—

THE COURT: I am not passing on the power. I want your idea.

MR. ANDERSON: But your Honor said, conceding that for the sake of argument. Then your Honor's suggested conclusion would probably follow. But the question goes back to the point that I am going to argue, that the power with respect to all that matter of policy is in Congress.

If Congress passed an act under the conditions which your Honor has outlined, which might appeal very strongly to its discretion, authorizing the seizure and confiscation of alien properties seized on land, and the method of confiscation was in accord with the Constitution, then I do not pretend that after Congress passed that act, the courts could inquire into the motives or the wisdom of the legislation, but only into whether it conformed to the Constitutional requirements.

The power is undoubtedly in Congress to confiscate. Therefore, as your Honor will see, the power is not in the Executive to confiscate. That has been decided by the Supreme Court of the United States and I do not think it will be controverted.

Therefore, your Honor's question brings us right up to the question of whether this statute was an act of confiscation or of sequestration and

seizure with power to convert property into money in the public interest, so long as the right of property involved was protected.

If it was an act of sequestration and the power of confiscation does not exist, then the sale can not defeat or unduly impair the property right involved and must be for a fair consideration.

Therefore, if this was an act of sequestration, which I contend it is, and not confiscation, although the President might have felt or the Alien Property Custodian might have felt that the public interests would be seriously endangered by not confiscating this property or selling it at a nominal price, which is confiscation under the decisions of the Supreme Court, and they might have felt it very strongly; yet, if Congress did not act to clearly give that power, then their act for that purpose would have been invalid under the decisions.

If that was true, the power of the President or of the Alien Property Custodian—I will first take up the power of the President here—was merely to direct one method of sale as distinguished from another method of sale, where the public interests required the employment of the second method as distinguished from the first method. It was purely a method. It did not affect the principles which should control the sale in any way, except to the extent enumerated in the act, which I outlined, the four or five points such as advertisements and so on. That is all method, all method. And it might even go so far as to give the power to sell to a neutral as distinguished from an American citizen. But the sale and sale only is contemplated, and not confiscation.

Therefore, when the President in the exercise of his power—assuming that he had it and did ex-

ercise it—determines for reasons in the public interests, which must be stated in the order, under the act of Congress, that a private sale would be better than a public sale, that is all right. You could make the private sale provided he was not misled as to the facts and did not exercise that power upon mistake of fact, or fraud—which we are not discussing. I make myself clear that far.

Then when the President acted, the Alien Property Custodian would stand in the position, according to our contention, of a Trustee who ordinarily would be required to sell at public sale but had been authorized by the Court in this instance, or by the President—the same thing would apply in a court sale—to sell privately. Now, what must he do? He must sell, not confiscate; and he must sell as a Trustee.

Therefore, when he sells privately, he must get the full value of the property. If he depleted the value of the property to any material extent in the public interest, and with the best of intentions, he was exercising a function of Congress and confiscating to that extent and not selling; and therefore his act would be invalid even though he got some consideration. I hope I have made myself clear that far.

THE COURT: Yes.

MR. ANDERSON: I am speaking slowly because I am trying to get very definite my position.

When he sells, therefore, he must consider all of the conditions which are involved in a Trustee's sale, which are familiar law to your Honor. He was not required to sell en masse. The President merely authorized a private sale. He did not say, "You must sell them all together." The Alien Property Custodian made twenty-one sales. He could have made fifty sales, so as to better as-

certain the respective values. He could have made 100 sales. There might have been more trouble, but the duty of a Trustee is not controlled by such considerations.

He must not confuse the property of various trusts unduly. That would be a question of equitable consideration. There must be no combination of bidders to prevent an adequate price. He could not sell to himself. He could not be both buyer and seller and negotiate on both sides.

He could not sell properties of great value with properties of no value and not allocate the prices to the trusts.

All of those and numerous other elements which enter into the consideration by a Court of Equity of a sale, whether private or public, of trust estates would have to be considered after he got the authority merely to follow a different method from that generally followed in the act. That is all the authority the President gave him and that is all the authority the act gave the President to give him.

The President was not like a Court of Equity. If your Honor offered property at public auction and you could not get an adequate price, you might authorize the Commissioners of the Court to sell it privately. But your Honor would confirm that sale in the light of all facts or set it aside. It would be a conditional offer until your Honor confirmed it.

But the President had absolutely no power to confirm. He only had the power to authorize the Alien Property Custodian to reject and re-sell. See how careful Congress was. It did not give him the power to confirm the sale, if the Alien Property Custodian had done that, private or public, but merely gave him the power to re-sell, to

use their expression, at public or private sale,— the same thing— and subject to the same conditions. He could again reject, but he could not confirm.

Therefore, if I have made my position clear now, as I hope I have, first, the power of considering the public interest as affecting the proper sale of trust property and allowing it to be sold or in part confiscated or devoted to the public interests, was purely in Congress. If this was an act of confiscation, then assuming the other condition to exist, and Congress exercised that power, that would be the end of it, whether right or wrong.

Second, the power of the President was merely to prescribe the method and not to sell or to confirm the sale. Further, when he prescribed a different method from that ordinarily followed, he had to state his reasons; showing that Congress most carefully guarded this unusual treatment of property, which Chief Justice Marshall once said in one of his opinions was the highest known trust, that is, alien property in the hands of the Government.

When the President said, "You can follow this method instead of the one generally prescribed," that ended his power. That is all Congress gave him power to say and to state his reasons therefor.

Then the Alien Property Custodian, as trustee, following the method which the President had indicated and authorized, would have to be controlled by all the considerations which would enter into a public sale; and even though he sold at less than the fair price or under conditions which made it not a fair sale within the contemplation of equity, the President could not come in and confirm it. Although he might think it was a wise thing, he could not do a thing. All he could

do was to authorize the rejection of the bid. And, if the Alien Property Custodian accepted it and it violated in any material respect the rules of equity with respect to trusts, then under the obvious intent of Congress and the familiar rules of law, you would have to set aside that sale. The President could not do anything about it but reject it, and the Court would have to reject it. That then is subject to review like any other act of an officer in the courts, where the rules for his guidance have been fixed by an act of Congress, which alone fixes the policy of this Government.

Have I made myself clear?

THE COURT: Yes, except that you stop just where I hoped you would not stop; and that is, you debated or told me your views and contentions with respect to the power under the act. I understand that and that is a matter about which I am forming no conclusions. For the purposes of all this evidence, I am assuming he had the power.

These Flush Tank letters deal in greatest measure, not with price, because you could get that in three lines, that the offer had been made, $2,000 for five patents, if that is what is disclosed; but letter after letter about them being dedicated to the public interest and things of that sort are being introduced, and for what I have been trying to determine. They do not deal with power because if the purpose of introducing those letters is to indicate that the President even from the public's standpoint made a wrongful use of his power, then you are asking me to review not a wrongful use but an unwise use; that is, you are asking me to review an exercise of conceded power. I do not mean conceded for all purposes.

MR. ANDERSON: I understand.

THE COURT: Then it seems to me that if

there is one thing a Court can not do, it is to substitute its opinion of what is for the greatest public interest for the judgment of the President or Mr. Polk or Mr. Palmer, or—

MR. ANDERSON: Any other authorized official with discretion.

THE COURT: Any other authorized or empowered official.

MR. ANDERSON: With discretion. I am in entire accord with your Honor's view on that subject to the limitations I have outlined. Assuming the discretion to be vested in the officer and assuming that the officer in the exercise of that discretion has complied with the method which Congress has prescribed and has acted upon the known facts, which is always a ground for review, then the wisdom or the unwisdom of the exercise is not subject to review. There is no question about that. Now I am going to answer your Honor's question.

The Pacific Flush Tank case bears upon all the provisions of this in the lines I have indicated and which I am not going to restate. In the first place the matter of the dedication to the public interest is material only as showing that even with the obligation assumed by the Pacific Flush Tank Corporation to make the dedication, which I want your Honor to bear in mind, because it was not the public making the dedication, it was the owner making the dedication, which he had a right to do, they were willing to give a price in excess, far in excess of the price paid by the Chemical Foundation; second, that the Chemical Foundation's defense is that they were making these things available for the public and in the public interest. The President did not pass directly upon the Pacific Tank case in specific terms, but

it can not be conceived that if those facts had been represented to the President—and they were not—he could have authorized the sale to a private corporation when the owner exercising the right was then willing to give many times what the private corporation paid, and to dedicate it absolutely to the public interest so far as the use by the citizens is concerned. Therefore, it goes to show a failure to disclose facts to the President which were material, and further it shows the impossibility of the method of sale followed—that it was a violation of the whole intent of this Act that the President should exercise the power in the whole sale, not only as to property heretofore seized, but as to property hereafter seized, without knowing the amount, character, facts or value, or any of the essential bases of the exercise of that discretion; that the President or Mr. Polk, if he had the authority, was badly advised in the haste and confusion of this situation in signing an order under those conditions, because the order was contrary to the intent of Congress as manifested by the act.

THE COURT: I wonder if you will help me for just another moment.

MR. ANDERSON: Yes, sir, I will go further with you.

THE COURT: Congress did not intend to do a military thing in passing this Act, did it?

MR. ANDERSON: No, sir.

THE COURT: There were 4800 of these patents?

MR. ANDERSON: Yes, sir.

THE COURT: The President had some other things to do besides considering these patents, did he not?

MR. ANDERSON: He certainly did.

THE COURT: There is no question in your mind but what Congress intended to vest in the President the power to authorize a private sale?

MR. ANDERSON: A private sale.

THE COURT: Of any alien property.

MR. ANDERSON: Upon the facts presented; yes, sir.

THE COURT: How many groups of these patents have you which are in a more or less similar condition with the Flush Tank?

MR. ANDERSON: Well, we have no case where a man has offered to dedicate it.

THE COURT: No.

MR. ANDERSON: But in general the patents group themselves into dye stuffs, pharmaceuticals, and certain trademarks and copyrights, all of which are described in the Bill, and they have no operating relation to each other and the ownerships have no relation to each other.

THE COURT: It would have taken how long to disclose the facts pertaining to these Flush Tanks to the President?

MR. ANDERSON: About five minutes, sir. You could have put it in one executive order. I will tell your Honor now that I am going to introduce in evidence, just as counsel yesterday introduced the various orders signed by Mr. Polk—so I am going to ask your Honor to permit us to introduce in evidence the various orders signed by the President, for two reasons, to show that the President personally signed the orders, to show that he recognized it as a personal duty, and second, to show that it mattered not, with the exception of one general order to sell anything under $10,000 in value, which would go obviously—that the costs would justify that, and he states that in so many words; that in every instance, even as

to a few shares of stock, two hundred bales of cotton, a little tobacco, he entered a special Executive order.

Now, those orders, as appear here, were drawn in the Alien Property Custodian's Office, and he presented the facts upon which the President was asked to act, and the facts as to any such thing as this, any group of patents, any merged group owned by any individual, could have been sent up by separate order to Mr. Polk, and he could have signed it; and suppose, in the administration, it did take a little more time, this was a Trust, and I can not conceive that the Government of the United States could ever reach the state where, unless Congress made its intentions very clear, it would confiscate or destroy the property of aliens under its control, without taking the necessary time to do the act in a proper and legal way.

THE COURT: I am sorry to trouble you so much, Colonel Anderson, but you are clarifying the issues for me. Suppose those Flush Tank patents were worth not $2,000, but $20,000, or, we will say, $50,000, because your colleague says there was $27,000 due, and a portion of which was uncollected, and the patents had a term to run; the difference between $250 and $2,000, when placed opposite $50,000, would be relatively small; but I am wondering whether the Government would not have power to seize those patents and keep them for itself?

MR. ANDERSON: Your Honor has asked me a very delicate question, but my representation of the Government is limited to this case, and therefore anything that I say would not be construed as binding the Government as to other matters.

THE COURT: No.

MR. ANDERSON: Because Congress would undoubtedly have the power to seize this property or any other property, enemy-owned property, I mean, and confiscate it to the public use as it did.

THE COURT: Did what?

MR. ANDERSON: Confiscate it to the public use, as it did in the Civil War. That has been sustained by the Supreme Court. Your Honor will recall that the Confiscation Acts and the Alien Property Acts, in the Civil War, by judicial proceeding *in rem*, confiscated property, including real estate and other property in the South, and devoted the proceeds to the use of the Army, to the maintenance of the Army, and as I construe the decision in Mrs. Alexander's Cotton case in 20 Wallace, the Supreme Court held that it could be confiscated to the public use, but could not be for private benefit.

That is my construction of that decision, so that a distinction exists between public use and the purposes here involved, which I contend is for a private industry; but I have no doubt in my own mind, not the slightest, that any effort on the part of Congress, I mean any effort on the part of the Executive Department of the Government, to take alien property during the war or after the war, after the Armistice and before the Treaty, for the public use under this Act, would have been absolutely invalid; and that unless the Treaty provided for the release and foreclosed the original owner of the property, assuming that he would have been permitted to sue the United States, (which I doubt) then he would have had a right against the United States for the taking of his property without confiscatory Act of Congress, just as any other person would, after the war was over; but that involves the question of the right

to sue the United States. Even if he had the right, he could not enforce it, because the Government could not recognize it.

MR. ANDERSON: But the Treaty would have foreclosed, if he had waived any claim against the United States, assuming that his Government could have waived that claim. Now, in this case, I do not want to stop there, because if I do I might leave your Honor under a misapprehension. In this case the situation is entirely different. The Government could do for public purposes what an officer of the Government could not do for private benefit. He can not subsidize industry. He can not, for a private benefit, violate the Acts of Congress, the Sherman Anti-trust Act, for instance, making a contract in violation of that Act. An officer of the Government can not do that. That is outside of his power because he takes an Oath to uphold that Act. That is a question of power.

Now, in addition to this being a private industry, although the advancement of that industry may have been in the opinion of many, including the President himself, in the public interest, there is no power in the President, or any other officer of the Government, to subsidize anything that he may think is in the public interest.

Your Honor will see, therefore, that the situation is entirely different in this case than a case in which the Government itself seized this property and appropriated it to the public use. But that power would not have existed unless there was an Act of Confiscation, and it would have been a violation of the law unless the persons whose interests were violated had been stopped by a subsequent Treaty.

Now, this Treaty—this Act provided that this property should be held for the benefit of the

United States and such other persons as might be interested therein. That is what it said the Alien Property Custodian was holding it for, and that Congress would determine at the end of the War who should be interested therein. Therefore, it was a Trust for an undisclosed beneficiary, with a power to appoint the beneficiary in Congress—reserved in Congress; and it necessarily follows that it was a duty of the Trustee—I use that expression—or Alien Property Custodian, in making the sale in the method authorized by the President, to sell it only for a fair and proper consideration. The Courts have held that any number of times, that a sale without adequate consideration is outside of the power of the Government officer, no matter how high he is. They have set aside sale after sale for that.

Now, in the second place, he can not sell public property except as provided by law. In this particular case he was selling trust property in addition to the public interests involved—contingent public interests. That brings us right back to where we were before, that he can not sell it for that purpose; cannot consider anything but a fair sale for a fair consideration.

Your Honor will observe that this is an act of sale and not of confiscation.

Now then, if this Government had taken all of these patents over to the War Department or Navy Department, or the Government of the United States in general, you would have had a different question, but even then it would have been invalid without express power from Congress. The final treaty here, your Honor will recall, did not approve the sale of this property. It provided that the property should be held. The Treaty with Germany, today the law of this coun-

try, provides that this property should be held by the Government of the United States to await certain things to be done by Germany, unless it has been disposed of as provided by law; that is, unless there has been a legal disposition, lawful disposition thereof. And the provision that Congress will finally determine who it belongs to is still a part of the Statute Laws of the United States. Therefore, while the Treaty released the United States from anything it may have done, infringements and otherwise, it provided that this property should be held to be finally disposed of as Congress may direct, Congress must determine who shall have it.

Therefore, if I have made myself clear, the question your Honor asked presents a very delicate question, probably a moot question because of the Treaty position, one which has been determined by the Supreme Court of the United States as being entirely different from the question before the Court here; but it is very confusing. I will say to your Honor quite frankly, that I have studied this question, and that the very question your Honor has asked me now, gave me perhaps the greatest difficulty in getting the distinction clearly in my mind; and that justifies me in taking the time I have taken.

THE COURT: Now then, if I understand you, Colonel Anderson, I am not trying to debate this.

MR. ANDERSON: I understand.

THE COURT: If I understand you then, the issues of this case are restricted to, first, the power in the President; second, to whether he properly exercised that power in two ways; first, by the delegation of power or attempted delegation of power, to Mr. Polk; and second, whether he accomplished anything by his order whenever it was.

MR. KRESEL: February 26.

MR. ANDERSON: December 3rd was the order of delegation appointment.

THE COURT: The subsequent order of ratification.

MR. ANDERSON: February 13th, 1920.

THE COURT: Then you challenge all three of those orders?

MR. ANDERSON: I challenge the last because of the fact of the power of ratification and its terms.

THE COURT: I am not trying now to get the reasons. You challenge the power?

MR. ANDERSON: Yes.

THE COURT: You challenge the power to delegate, you challenge the power to ratify, then you come to the sale. As I understand, you come ultimately, each time, to the question as to whether the Alien Property Custodian got enough money for these patents, and that only?

MR. ANDERSON: No, sir. If your Honor so understood me, you understood me wrong. If the Alien Property Custodian had gotten more than these patents were worth, this would have been an invalid transaction.

I stated at the outset that this was a sale by the Trustee to himself; and the Courts have set aside that even where they got more than it was worth, because of incapacity to bid and to act as buyer and seller; and second, that the consideration paid is only one of the elements of a fair sale.

To be quite frank with your Honor, I am going to put in evidence here, I am going to show the value of these patents. I stated to Mr. Kresel last night that I did not think that was on me at all, but we are going to make proof of every para-

graph of our Bill, on the theory that I started out with to try this case. I think the burden is on the defendant entirely. So that all of the elements of a fair sale must be complied with in a Court of Equity. Not one. And consideration is only one.

THE COURT: And the other is that the defendant was in no position to bid?

MR. ANDERSON: That is one, yes, sir.

THE COURT: Were there other elements besides those two?

MR. ANDERSON: A consideration and defendant's position to bid.

THE COURT: Yes.

MR. ANDERSON: And failure to present the facts to the President.

THE COURT: You are going back to authority.

MR. ANDERSON: That would be a mistake of fact. I will put it that way. Third, would be a combination of bidders. If there was not anything else in this sale, in my judgment the sale should be set aside. Fourth, would be—and I undertook to make this clear in my opening argument, and I want to repeat it: that this would be an absolutely invalid transaction if there was no other fact in it than that its obvious purpose was to create a monopoly and restrain the interstate and foreign commerce of the United States, which acts, the Sherman Act declares to be unlawful, both of them; and no officer of the Government can make an unlawful contract.

THE COURT: Thank you very much.

MR. ANDERSON: Those are some of them. There are other reasons, but I will merely state those.

MR. KRESEL: Am I to stay out of this very interesting discussion?

THE COURT: I still do not see the relevancy of the Flush Tank documents save only as to the price that was offered for them, and the further possible relevant feature that those letters or facts therein disclosed were not presented to the President prior to his signing the order.

Now, Mr. Kresel, I am not inviting an argument, but I shall be glad to hear you.

MR. KRESEL: There are only two or three points, it seems to me, your Honor, in this very interesting discussion that are so interesting and to our mind so clear, that perhaps your Honor will permit me to call them to your attention: Now, as I understand the Government's position, at the very basis of their contentions lies the proposition that the Alien Property Custodian was a mere naked Trustee of this property and as such owed to the *cestui que trust* the duties which we lawyers understand the law has laid out for Trustees, and that there has been no change in the position of the Custodian in that respect by any amendment of Congress or by any of the treaties, and that today, as I understand Colonel Anderson's argument, it is still the duty of the Alien Property Custodian as Trustee of this property, if he makes any sale, to see to it that he gets every dollar out of the property that it is worth, notwithstanding any public considerations whatsoever.

Now, I desire to call your Honor's attention first to the fact that whatever may have been the position of the Alien Property Custodian with respect to this property under the Trading with the Enemy Act, as originally enacted, and whether that position was or was not changed by the amendment of that Act of March 28th, 1918, it was clearly changed by the Treaty of Versailles, which,

although it was not approved by the Senate and therefore did not become a Treaty with this Government, was nevertheless taken advantage of and expressly so stated in our Treaty with Germany, among other things, in so far as it related to enemy property; so that the provisions of the Treaty of Versailles are today a part of our Treaty with Germany, in so far as the provisions of the Versailles Treaty relate to enemy property.

There is an express provision in the Treaty of Versailles ratifying every act taken by any agency of any of the allied Governments with respect to enemy property. So, if there were no express ratification of this act by the President, there is a ratification taken advantage of by our Government and approved in our Treaty with Germany, ratifying every act of the Alien Property Custodian and the President up to that time with respect to enemy property, and of course we all agree that a treaty at least has the force of an Act of Congress if it is not superior to that.

So we have now, in our organic law, so to speak, a ratification of every Act of the Alien Property Custodian with respect to the disposition of enemy property, and of course this was disposed of before the Treaty with Germany was made.

Therefore, without discussing any further the question as to what the original duty of the Alien Property Custodian may have been with respect to this property, whether it was the duty as contended for by Colonel Anderson, simply to see to it and solely to see to it that he protected this property, and if he sold it, that he got everything that it was worth. Whatever that may have been, today, as we stand here before your Honor, this Act was approved by the Treaty between our-

selves and Germany, and has the force of an Act of Congress as if Congress had passed a special Bill, and said: "We approve the Act of the Custodian in making this sale." And, if it be confiscation, I repeat what I said in my opening statement, that we are not afraid of the word; if it be confiscation, it was confiscation by Congress, which Colonel Anderson concedes the right to confiscate.

Now, as your Honor will recall, we do not place our position solely on that ground. Our contention is that long before our Treaty with Germany and the Treaty of Versailles, Congress, by the Act of March 28, 1918, gave to the President the very power that he exercised here.

One other point. Colonel Anderson repeated in his very interesting argument this morning, the contention that he made in opening the case, to the effect that all that the amendment of March, 1918, empowered the President to do was to direct a different method of sale than that provided by the Act; and as a corollary to that proposition, he argues that the President had no power even though he ordered a private sale, to fix any price at which such sale should be made, unless that price, in his language, "was fair and reasonable." Going back to his original proposition that this was a trust relationship and that the best price must at all events be obtained, public policy notwithstanding.

I wonder if your Honor is familiar with the very late decision of the Supreme Court which in our view decides this question, and, strangely enough, is a case that we sometimes run across, which on its facts is so nearly alike to the facts in this case that it is really remarkable; and in that case the United States was a party, as it is here.

THE COURT: Party plaintiff?

MR. KRESEL: Party plaintiff. The title of the case, in the Supreme Court, was Levinson against the United States. It is reported in the 258th United States, decided March 13th, 1922, and like this case grew out of the late war. In that case, the Secretary of the Navy made a sale of a vessel owned by the Government, and the sale was made under an Executive order.

The Act of 1883 provided that no sale of public vessels should be made without an appraisal and without public advertisement for a period of three months; but the Act went on further to say: "But no vessel of the Navy shall hereafter be sold in any other manner than herein provided," namely, appraisal, advertisement—"or for less than such appraised value unless the President of the United States shall otherwise direct in writing."

Now, may I stop there and compare this act with the Act of March 28th, 1918. In each case the Act provides, starts out with the provision that there is to be a public sale, public advertisement. In this case there even had to be an appraisal of the property, but in each case there was this proviso: "Unless the President of the United States shall otherwise direct in writing."

Now, that being the Statute, the Secretary of the Navy advertised that he would sell to the highest bidder a certain vessel belonging to the Navy, and he advertised it for the required period of time. A bid was received by a man named Levinson, and the Secretary of the Navy, thinking that that was the highest bid received, accepted it and gave Levinson a Bill of Sale. Levinson paid the money. Shortly thereafter it was discovered that a man named Johnson had also sent in a bid, and

that Johnson's bid was the higher of the two, and so the Secretary of the Navy concluded that he would like to accept the higher bid; so he went into the Court, the United States Government went into Court and brought a Bill which the Supreme Court, in its Opinion, describes as "A bill to determine the rights of the parties;" and then, it was made to appear that the provision of the Act of 1883 was for an appraisal and a public sale after advertisement; that the President had exercised the power given to him to direct a departure from the maner of sale and that the Secretary of the Navy, had, pursuant to that power, taken the property which had been assigned to Levinson and gave it to Johnson.

The order of the President, if I may read it, or just an extract from it, provided that if the owner of the vessel would not purchase at the appraised value, "the Secretary of the Navy shall sell at public sale for such price as he shall approve"—as the Secretary of the Navy shall approve. Just like us, the Secretary of the Navy did not advertise for the three months and he allowed a variation—I am reading from the opinion of the Court—from the Statute in the form of deposit required and undertook to deliver this vessel to the other bidder.

The Court said that notwithstanding the mistake that was made, the sale to Levinson was a proper sale, notwithstanding that he was not the highest bidder, and that the Secretary of the Navy, having delivered a deed of the vessel to Levinson, Levinson's title could not be attacked.

The Court says, if I may read just a few sentences: "The power of the President to direct a departure from the Statute is not confined to a

sale for less than the appraised value, but extends to the manner of the sale."

In other words, here the Court says under a provision similar to ours where the sale had to be made to the highest bidder the President had the power to direct that a lower bid be accepted, he had the right to set the price. Because the Court says that the power is not confined to a sale for less than the appraised value, but extends to the manner of the sale. As Mr. Choate calls to my attention, he had the right to authorize the Secretary of the Navy to fix the price, as he did. And, as in our case, the Executive order reads that the Alien Property Custodian shall sell upon such terms and conditions and for such price as he shall determine, as was done here.

The Court says, "The word 'unless' qualifies both the requirements of the concluding clause," and so we claim in our case that the word "unless" qualifies every condition that precedes it, and the one of price is included.

(Reading from opinion) "The Executive order seemingly so construes the Statute for it merely provides that if the former owner of the vessel will not purchase at the appraised value the Secretary of the Navy shall sell at public sale 'for such price as he shall approve.' The Secretary construed the order to like effect. He did not advertise for three months and he allowed a variation from the Statute in the form of deposit required."

"It seems to us," says the Court, "that the practices of ordinary business dealing ought so far to bind the United States that the ostensible authority given by the Executive order, the Secretary's declaration that Levinson's bid was the highest, his approval of the price and his execu-

tion of a bill of sale, should be held conclusive in favor of Levinson.

"The fact that the Secretary advertised that he would sell to the highest bidder could not limit his authority or diminish the effect of his acts. Even if Johnson's bid had made a contract automatically by being the highest," says the Court, "it would not follow that Levinson's title was bad. But a bid had no such effect, as the right to reject it was reserved.

"We can see no justification beyond the wish to secure a higher price, for the refusal to allow the appellant to remove his yacht."

Of course, your Honor, when we come to argue this case, we shall argue the other points of law involved, but I could not refrain from answering these two points that were made by Colonel Anderson in his very interesting argument.

MR. ANDERSON: May I just refer to the Levinson case?

THE COURT: I do not care to have you distinguish that just now, Colonel Anderson, because I did not intend by my inquiries to lead you back into the construction of the Statute or the orders signed by the President or any of them. I only wanted to get clear in my own mind just what your purpose was in introducing these letters.

You may proceed, Mr. Galloway.

MR. GALLOWAY: If your Honor please, the plaintiff next offers in evidence a letter dated March 28, 1919, from J. Davis Broadhead, who was the Judge Broadhead of whom we spoke a few moments ago, to Honorable Francis P. Garvan, Alien Property Custodian, in re the Imhoff patents for the building of city sewage disposal plants. I ask that the same may be read in evidence as Plaintiff's Exhibit No. 165.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 165." (*See Exhibits, Vol. I, page 392.*)

MR. GALLOWAY: If your Honor please, this letter repeats the things that have been stated in the prior correspondence and also states that the contract which the Pacific Flush Tank Company held from the enemy provided for thirty per cent of the royalties to go to the American agent and 70 per cent to the enemy; that the Federal Trade Commission in 1917 granted an exclusive license to this company to continue to represent the enemy under the same terms as set forth in the contract; that the Custodian has issued a demand for the 70 per cent due the enemy, of which about $6,000 has been collected and paid into the treasury of the United States, leaving outstanding and uncollected as yet $27,483; that the Custodian has seized the patents subject to the rights and the exclusive license granted to the Flush Tank Company. Then it repeats the offer of the Flush Tank Company and outlines possible procedure in the disposition of these patents.

Attached to this is an exhibit showing some 6½ pages of towns from which the royalties have accrued.

Plaintiff next offers in evidence a report from the files of the Alien Property Custodian from J. R. Zimmerman. Will it be conceded that Mr. Zimmerman was in the Patent Section of the Alien Property Custodian's office?

MR. HERSHKOPF: If that is the fact, it will be so stipulated. What is the date of that report?

MR. GALLOWAY: This is an undated report and refers to the fact that these patents have been

conveyed, that is, the Imhoff patents, to The Chemical Foundation.

MR. HERSHKOPF: To whom is the report?

MR. GALLOWAY: It is from the files of the Alien Property Custodian—in re report No. 1106.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 166." (*See Exhibits, Vol. I, page 401.*)

MR. GALLOWAY: If your Honor pleases, plaintiff next offers in evidence a letter to Mr. F. C. Yeomans, Asheville, North Carolina, from Robert C. Goldstein, Chief of Division, Patents, of the Alien Property Custodian's office, dated August 6, 1919, with reference to these Pacific Flush Tank or Imhoff patents, which in substance directs this licensee to pay all royalties in the future to The Chemical Foundation, because of the alleged purchase.

THE COURT: Who signed it?

MR. GALLOWAY: Robert C. Goldstein, Division of Patents, Alien Property Custodian's office.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 167." (*See Exhibits, Vol. I, page 402.*)

MR. GALLOWAY: Plaintiff next wishes to call attention to the minutes of The Chemical Foundation of August 2, 1921, in which The Chemical Foundation appoints the Pacific Flush Tank Company as the exclusive agent of The Chemical Foundation to issue licenses for it upon practically the same terms and royalties as the enemy contract provided.

MR. KRESEL: Are those minutes in evidence?

MR. GALLOWAY: We were planning to offer the minutes all together. However, I can offer

them at this time. I merely called the attention of the Court to them.

MR. KRESEL: Just the portion which relates to that. You do not want the whole minutes, do you?

THE COURT: I do not see the relevancy of that clause after considering all the thoughts suggested by Colonel Anderson and yourself, but you may put it on the record.

(At this point a short recess was taken at the direction of the Court.)

MR. GALLOWAY: If your Honor please, the plaintiff at this time offers in evidence the meeting of the Board of Directors of the defendant, The Chemical Foundation, Incorporated, dated August 2, 1921, and calls attention especially to the discussion concerning the license to the Pacific Flush Tank Company.

THE COURT: Do you want the minutes as a whole admitted?

MR. GALLOWAY: We are quite willing, if your Honor please, to eliminate at this time the portion of the minutes referring to the balance sheet of The Chemical Foundation.

THE COURT: Will you mark it or indicate in some way what portions you are offering?

MR. GALLOWAY: We had in mind, if the Court please, that it might be possible for the plaintiff and the defendant, perhaps afterward, when we are making up the record, to agree upon the elimination of a lot of these things that are immaterial and irrelevant, and we shall be glad to take up—

MR. KRESEL: Are you now talking about the minutes only?

MR. GALLOWAY: Perhaps other things, Mr. Kresel.

MR. KRESEL: You do not concede that you

have put in other things that are immaterial and irrelevant?

MR. GALLOWAY: Only in connection with things of this sort, where there is a portion of a document that is irrelevant.

MR. KRESEL: To confine ourselves to the minutes, you are now offering the minutes of this particular meeting.

MR. GALLOWAY: That is what we are offering now.

MR. KRESEL: The whole of them; is that so?

MR. GALLOWAY: I should be willing to eliminate the portion of these minutes beginning with the words "Balance sheet" and ending with the word "Adjourned," which consists of a balance sheet of the corporation as of June 20, 1921, and the formal part adjourning the meeting; including, however, in the minutes the signature of the Secretary, George J. Corbett. We also wish to have included in this exhibit a form of license by The Chemical Foundation, which is attached to the minutes of this meeting.

THE COURT: The portion of the minutes so indicated will be admitted, taking its numerical exhibit number, and the license will be given the same number followed by the letter "A."

Portion of minutes marked Plaintiff's Exhibit No. 168; license marked Plaintiff's Exhibit No. 168-A.

Received in evidence and marked "Plaintiff's Exhibit No. 168." (*See Exhibits, Vol. I, page 403.*) And No. 168-A (*See Exhibits, Vol. I, page 406*).

THE COURT: Will you mark the omitted portions in such a way that you may be able to identify them, Mr. Galloway?

MR. GALLOWAY: Yes, sir. The plaintiff next

offers in evidence minutes of a Directors' meeting of the defendant, The Chemical Foundation, of October 5, 1921, excluding therefrom or omitting from such offer the portion beginning on the second page of such minutes with the words "Mr. George Corbett" and ending with the word "Adjourned;" including, however, the signature of the Secretary. We also ask to have admitted as a part of this exhibit to be numbered in its numerical order a copy of the form of license adopted for use in the license to the Pacific Flush Tank Company.

THE COURT: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 169." (*See Exhibits, Vol. I, page 421.*) (Portion of minutes.) License marked "Plaintiff's Exhibit No. 169-A." (*See Exhibits, Vol. I, page 423.*)

MR. GALLOWAY: Plaintiff next offers in evidence a copy of the contract between The Chemical Foundation, Incorporated, and the Pacific Flush Tank Company, dated August 12, 1921.

THE COURT: Admitted.

MR. GALLOWAY: I ask that the same may be read in evidence as Plaintiff's Exhibit No. 170.

Received in evidence and marked "Plaintiff's Exhibit No. 170." (*See Exhibits, Vol. I, page 427.*)

MR. GALLOWAY: The plaintiff offers in evidence a letter dated December 31, 1918, to Fred K. Seymour, by the Assistant General Counsel and Counsel to Washington Sales Committee of the Alien Property Custodian's office, with reference to the sale of two certain patents mentioned and an application mentioned. This letter, if your Honor please——

MR. KRESEL: May I see it?

MR. GALLOWAY: Surely.

THE COURT: From whom?

MR. GALLOWAY: From Mr. Whitaker, the Assistant General Counsel of the Alien Property Custodian to Fred K. Seymour and states that they do not want to sell certain patents at private sale. This is leading up to another instance where they refused to sell to a private corporation, and then afterwards sold to The Chemical Foundation.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 171." (*See Exhibits, Vol. I, page 438.*)

MR. MAHAFFY: Is that signed? The copy I have does not bear any signature.

MR. GALLOWAY: Mr. Kresel, will you stipulate that that is signed by Mr. Whitaker?

MR. KRESEL: If you say so, I will so stipulate. "S. W." stands for Spier Whitaker, doesn't it? I will concede it.

THE COURT: Will you put the signature on it so we will not have to turn back to the record?

MR. KRESEL: I notice that that letter refers to a letter from the gentleman named Seymour. Have you that? I think the letter to which this is a reply ought to go in.

MR. GALLOWAY: I do not have it here, but I should be glad after luncheon to put that in, Mr. Kresel.

Plaintiff next offers in evidence a letter from Joseph A. Hart to Honorable A. Mitchell Palmer, dated February 5, 1919, referring to the same four patents and asking if they could be put up for sale and that Mr. Goldstein was familiar with that matter.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 172." (*See Exhibits, Vol. I, page 439.*)

MR. GALLOWAY: We next offer in evidence a memorandum from R. C. Goldstein to Mr. A. Mitchell Palmer, dated February 20, 1919, with reference to these patents, and ask that the same may be read in evidence as Plaintiff's Exhibit 173. This states (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 173." (*See Exhibits, Vol. I, page 440.*)

MR. GALLOWAY: Plaintiff next offers in evidence a memorandum from A. M. P., which says "Memorandum from the Custodian to the Washington Sales Committee," dated February 22, 1919, and asks that the same be considered as read in evidence as Plaintiff's Exhibit 174.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 174." (*See Exhibits, Vol. I, page 440.*)

MR. GALLOWAY: Plaintiff next offers in evidence a memorandum dated March 3, 1919, from the Custodian, initialed "A. M. P." to Mr. Whitaker, in re Klipstein & Sons Company and asks that the same may be read in evidence as Plaintiff's Exhibit 175. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 175." (*See Exhibits, Vol. I, page 441.*)

MR. KRESEL: Who writes that?

MR. GALLOWAY: A. M. P.

MR. KRESEL: Mr. Palmer?

MR. GALLOWAY: Mr. Palmer.

Plaintiff next offers in evidence a letter from

Ramsay Hoguet to Mr. Spier Whitaker, of the office of the Alien Property Custodian, dated March 10, 1919, concerning Klipstein & Sons and the Badische Aniline & Sode Fabrik matter and asks that the same be read in evidence as Plaintiff's Exhibit No. 176.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 176." (*See Exhibits, Vol. I, page 442.*)

MR. GALLOWAY: This letter states (reading).

We now come to another set. I may state, if the Court wishes to follow it, these patents we are discussing were conveyed to The Chemical Foundation.

Plaintiff next offers in evidence a letter dated May 20, 1919, to the Alien Property Custodian from E. Leitz, Incorporated—I cannot tell the signature of the General Manager—and asks that the same be read in evidence as Plaintiff's Exhibit 177.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 177." (*See Exhibits, Vol. I, page 443.*)

MR. GALLOWAY: This letter refers to a certain patent for a color-measuring device and states that if the patent is for sale, they desire to know how it can be purchased.

Plaintiff next offers in evidence a letter from E. Leitz, Incorporated, by the General Manager, to the Alien Property Custodian, dated May 29, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 178.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 178." (*See Exhibits, Vol. I, page 444.*)

MR. GALLOWAY: This letter states that they have received no reply or answer to their previous letter and asks the same question again.

Plaintiff next offers in evidence a letter from Mr. Goldstein, Chief of the Division of Patents, Alien Property Custodian's office, to E. Leitz, Incorporated, dated May 31, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 179.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 179." (*See Exhibits, Vol. I, page 445.*)

MR. GALLOWAY: This letter acknowledges receipt of the prior letters and refers to the patents for a color-measuring device and states "This request is receiving attention" and they will be advised later.

Plaintiff next offers in evidence a letter of the same date, May 31, 1919, to Mr. Ramsay Hoguet, 149 Broadway, by Mr. Robert C. Goldstein, Chief of Division of Patents, of the Alien Property Custodian's office, and asks that the same be read in evidence as Plaintiff's Exhibit 180.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 180." (*See Exhibits, Vol. I, page 446.*)

MR. GALLOWAY: This letter says (reading).

We turn now to another specific instance. Plaintiff next offers in evidence a letter dated April 22, 1919, from Ramsay Hoguet to the Arabol Manufacturing Company, 100 William Street, New York City, and asks that the same may be read in evidence as Plaintiff's Exhibit 181.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 181." (*See Exhibits, Vol. I, page 446.*)

MR. GALLOWAY: This letter, if the Court please, states that the interest of the enemy in a certain contract between the enemy and this corporation to whom the letter is written including the right to receive future royalties has been seized by the Custodian and sold to the Foundation and that the Foundation thus becomes entitled to the royalties, and that in the future the same should be paid to the Foundation and the terms of the licenses are unaffected by this transfer.

Plaintiff next offers in evidence a letter from The Arabol Manufacturing Company, by A. F. Voight, Vice-President, to the Alien Property Custodian, dated April 24, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 182.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 182." (*See Exhibits, Vol. I, page 448.*)

MR. GALLOWAY: This letter states (reading).

Plaintiff next offers in evidence a letter dated May 6, 1919, from Robert C. Goldstein, Chief of the Division of Patents, of the Alien Property Custodian, to the Arabol Manufacturing Company and asks that the same may be read in evidence as Plaintiff's Exhibit 183.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 183." (*See Exhibits, Vol. I, page 449.*)

MR. GALLOWAY: This letter merely states, answering their inquiry (reading).

Plaintiff next offers in evidence a letter from the Chinosol Company to the Alien Property Custodian, dated March 21, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 184.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 184." (*See Exhibits, Vol. I, page 450.*)

MR. GALLOWAY: This letter written in March, 1919, refers to a patent, giving the number, and states that the patent is the property of the Chinosol Company and that it was assigned to them May 6, 1911. It gives the liber and the page of the records of the Patent Office where such assignment is recorded, and that there is not now a single penny of alien enemy money invested in this company either directly or indirectly, and that they will not convey or transfer or deliver the patent to the Custodian, that it is the property of this company duly recorded, "And we ask for your reply notifying us that you have made an error in this instance." The record, by Exhibit G, will show that this patent had at that time been seized by the Custodian.

The plaintiff next offers in evidence a letter dated March 26, 1919, by Robert C. Goldstein, Chief of the Division of Patents of the Alien Property Custodian's office, to the Chinosol Company.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 185." (*See Exhibits, Vol. I, page 451.*)

MR. GALLOWAY: This letter merely acknowledges receipt of the prior correspondence and states that the matter is receiving attention and that they will be advised.

Plaintiff next offers in evidence a letter on which I do not see any date, but the Alien Property Custodian receipt mark shows October 11, 1919, written to the Alien Property Custodian from the Chinosol Company, signed by Charles Roome Parmele, President.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 186." (*See Exhibits, Vol. I, page 452.*)

MR. GALLOWAY: This letter again protests against the seizure of this patent, and reaffirms the statement that it is owned by the Chinosol Company, again citing the book and page where the transfer to it in 1911 is recorded.

MR. KRESEL: There is a paragraph in that letter, Mr. Galloway, that I wish you would call to the Court's attention, namely, the paragraph which says that the writer has received the letter from The Chemical Foundation releasing the patents and the rights.

MR. GALLOWAY: I call the Court's attention to this part of the letter:

"We have clearly stated our position in this matter and we hold official assignment of patent" —referring to the book and page—"By no possible procedure had you the authority to include this patent in the list of patents which were turned over to The Chemical Foundation. The officers of that organization have clearly seen that they have no right to the title to that patent and we have received from The Chemical Foundation a document duly signed by Mr. Douglas I. McKay, Vice-President, dated August 25, 1919, saying: 'Complying with request contained in your letter of August 22nd, I beg to state that The Chemical Foundation had no claim to letters patent'"—

giving the number. " 'A very serious injustice was done to us and a very considerable damage caused to our Company through the unwarranted inclusion of our patent among those which were turned over to the Chemical Foundation and we must now ask that you send us such document as will clear this matter up. It is not unreasonable for us to ask that you give this matter your prompt attention,' " etc.

THE COURT: Would you mind telling me the relevancy to the issues here of that letter?

MR. GALLOWAY: Your Honor please, We think we will show and evidence will be introduced to show the value of this patent which at the time that it was sold was included among those transferred to The Chemical Foundation. We think that the instance will also show that such course of procedure was not followed as should have been followed in a sale by a trustee.

The plaintiff next offers in evidence a letter dated October 14, 1919, by Mr. Goldstein, Chief of Division of Patents, Alien Property Custodian, to the Chinosol Company, referring to the same matter. I do not care to read that.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 187." (*See Exhibits, Vol. I, page 454.*)

MR. GALLOWAY: The plaintiff next offers in evidence a letter dated October 17, 1919, to the Alien Property Custodian from the Chinosol Company, signed by its President, again protesting about this matter and asking that the errors be properly corrected and straightened out.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's

Exhibit No. 188." (*See Exhibits, Vol. I, page 455.*)

MR. GALLOWAY: The plaintiff next offers in evidence a letter dated October 21, 1919, to The Chinosol Company, by the Division of Patents, Alien Property Custodian's office, and this is another unsigned copy. Would you be willing that we should write in the intials R. C. G.?

MR. KRESEL: We have no objection.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 189." (*See Exhibits, Vol. I, page 457.*)

MR. GALLOWAY: That refers to this controversy concerning the Chinosol patents.

The plaintiff next offers in evidence a letter dated October 21, 1919, to Ramsay Hoguet by Robert C. Goldstein, Chief of Division of Patents, calling to Mr. Hoguet's attention the Chinosol situation and asking that it be straightened out.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 190." (*See Exhibits, Vol. I, page 458.*)

MR. ANDERSON: If your Honor please, we have introduced in evidence minutes of certain meetings of the American Dyes Institute. We have the entire minutes of the Institute and there is a great deal in these minutes that we want in evidence, but we want to exclude that part which is immaterial and irrelevant. I have had extracts made of the parts we think material, except that we probably want to show in some instances the persons present, which I have not included in these extracts. I have not finished them yet. I want to offer in evidence, therefore, the extracts from the minutes of the American Dyes Institute show-

ing the persons present at the several meetings, extracts from which are introduced, and excluding at this point the minutes of those meetings which have already been introduced and identified, and I present a memorandum of the extracts from the several meetings which will be introduced, exclusive of the lists of persons present, a copy of which I will hand counsel for identification, and of course with the understanding that he will have leave to introduce any other parts of those minutes that he desires. Is that satisfactory, Mr. Kresel?

MR. KRESEL: Of course, subject to our objection as to its materiality and relevancy and with the understanding that we may be at liberty to refer to any other portion of the same minutes, why, there will be no objection to their putting in such portions as they desire.

MR. ANDERSON: Of course, I concede the right of the defendant to introduce any parts he desires of the same minutes.

THE COURT: Do you want them admitted as one exhibit?

MR. ANDERSON: As one exhibit, sir.

THE COURT: Or would you find it more convenient in briefing your facts to have them indicated alphabetically as well?

MR. ANDERSON: These are quite short extracts and I think if we have just a short heading it would be all right. We can fix the exhibit up a little better. Perhaps it would be in better form if it was marked as an exhibit, and identifying so many sheets.

Received in evidence and marked "Plaintiff's Exhibit No. 191." (*Exhibit withdrawn as copies of several minutes afterwards admitted in evidence as separate exhibits.*)

THE COURT: Colonel Anderson, inasmuch as it is on my mind now, any exhibits or any evidence which have been ruled out I now give you leave to present at any time in this case, now or at any time you desire.

MR. ANDERSON: Yes, sir, I wanted to offer at this time in evidence, or to re-offer in evidence the statement of Mr. Lee Bradley as Exhibit A with the Bill of Complaint in this case, to be identified as Plaintiff's Exhibit No. 192.

THE COURT: In making that statement I am not ruling on any question of law or fact.

MR. ANDERSON: Certainly not.

THE COURT: I recall that this among other things had been included, and as we have thrown the door wide open, without any restriction, on other mattters, I wanted that to be applied to all matters. It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 192." (Same as Exhibit A to bill of complaint. *See Record, Vol. I, page 75.*)

MR. ANDERSON: It is already in the record and I do not suppose it is of any use to read it, but just to give it an identification number.

THE COURT: No.

MR. ANDERSON: There was one thing excluded. I think it was some list. At this point, if the Court please, I desire to offer in evidence, and ask leave to read into the record as admissions by the defendant or by officers of the defendant, who alone can make admissions, certain statements by Mr. Garvan and by Mr. Choate, the general counsel of the defendant, made under oath before certain committees of Congress and taken from the public hearings of those committees. I offer them as admissions against the position taken by the de-

fendant in its answer in this case and in the opening statement of counsel. Do you object?

MR. KRESEL: Well, I want to see first what you are offering. Let me see what it is you are offering and I will tell you whether I object.

MR. ANDERSON: I was a little surprised that you had not objected already.

MR. KRESEL: I am always a respectful listener when you speak. I just want to see what portions you want to read. (Takes papers from counsel.)

If your Honor please, we object to the proposal of Colonel Anderson to read extracts from Mr. Garvan's statements made before the Congressional committees, upon the ground that the capacity in which Mr. Garvan appeared there as far as we know was in his individual capacity and not for the purpose of binding this corporation by any admissions he might make. The proceeding was a Congressional and not a judicial proceeding, and unless and until the Government put in proof by Mr. Garvan or by someone who can speak for the corporation that Mr. Garvan in making these statements undertook to make them as President of the corporation, for the purpose of binding the corporation, they cannot be used against the corporation in this case.

Moreover, may I state that the Government, if your Honor should sustain my objection, will not be deprived of the benefit of showing that Mr. Garvan made these statements, because it is our intention to put Mr. Garvan on the witness stand and Colonel Anderson will then be at liberty in cross-examining Mr. Garvan to show, of course, any statement that he has made. Whether such statement will amount to an admission binding the defendant, of course, your Honor will decide in view of what the statement may be; but we must

insist that the Court should not now permit the Government to select some disconnected portions of an examination of Mr. Garvan before a Congressional Committee and ssek to bind the corporation thereby.

THE COURT: I shall admit them without expressly or impliedly holding that the corporation is bound thereby, because I shall adhere to my main purpose not to restrict the Attorney General in any way whatsoever in making up his record in this case, and indeed he has leave to put upon the record any documentary or oral evidence which in his judgment he deems he should put of record, and whether or not he makes the documents or oral evidence of value is for him to determine in the first instance and for me to determine in the ultimate instance in this cause.

MR. KRESEL: In that view, your Honor, I desire you to rule now as to whether in case the Government now reads portions of Mr. Garvan's statement we have not the right to read any other portions.

THE COURT: You have.

MR. KRESEL: Or any other statements made by Mr. Garvan at this same examination.

THE COURT: Yes.

MR. ANDERSON: Your Honor, would you hear me on that? Won't you hear me on that motion?

THE COURT: If you want a ruling I will give it to you. But I am not going to apply one rule to you and another rule to Mr. Kresel.

MR. ANDERSON: Certainly not, but I think there is one point which I would like to suggest, which I think has not occurred to your Honor for the moment. I will state the law which I have here in Wigmore on Evidence. The rule as to admissions is that the statement of the adverse

party made at any time prior to the trial may be admitted as against his position in the trial. Not for the purpose of impeachment; that is not the point. Not for the purpose of cross-examination, necessarily, but as substantive evidence to the contrary of what he now contends.

But the rule does not go to the extent, because those admissions are put in, to put in his own declarations favorable to his position, because he can go on the stand and testify to those. The purpose of the rule is to permit the opposite party to put in these admissions, what are called by Wigmore "quasi judicial admissions" or "quasi admissions"—it depends upon the character of it—as distinguished from a formal admission in the pleadings. The opposite party is permitted to put in that admission as substantive evidence, and if the witness wants to deny or explain, he can go on the stand and do it.

It is different entirely from reading from a document like the Dyes Institute minutes which are not the admissions or statements of the party to this suit. I am quite prepared to agree that Mr. Garvan's admissions as to matters not relating to The Chemical Foundation or as to matters at a time when he was not President of The Chemical Foundation would have no bearing. But when the very question was under investigation and he made certain statements, those statements can be put in, without permitting the reading of any other portions of his statement. I would not want your Honor to apply a different rule in the case of the Dyes Institute minutes. I would not ask you to do it. But in this case, the only thing that can be read into the evidence is an admission as substantive evidence and he can then testify, if he wants to. I think Wigmore completely bears out

that statement and makes the very distinction I make.

THE COURT: I think you will find that Chamberlain, in his book on evidence, deals with that question quite fully, but I do not understand either Mr. Wigmore or Mr. Chamberlain, or any other text-book writers that I have read, or decisions I have heard, to hold that the only person who may determine as to what is relevant and admissible is the person who makes the selection from a particular document.

MR. ANDERSON: Not at all. I will leave it to your Honor.

THE COURT: I do not mean to suggest for an instant that a wholly disconnected matter or wholly disconnected statement which would be self-serving, would be admissible. But if in the same transaction, if in the same investigation, Mr. Garvan has said other things which differ from that statement—I do not know whether he did or not; I am not concerned with whether he did or not—but if he made such a statement which might qualify in any way this statement, at that same investigation or under similar circumstances, then is it your contention that the subsequent statement could not be admitted as tending to modify or qualify the statement so made?

MR. ANDERSON: Yes, he must go on the stand and testify to it and I think I can convince your Honor of that from the authorities. He has a perfect right to explain on the stand.

THE COURT: If in the same deed, for instance, or same letter, he says one thing on one page and on the next page he says, "You will understand that the statement on the previous page is made with this qualification and restriction," the second page could not go in under your statement.

MR. ANDERSON: I think your Honor has stated a very extreme case of denying it. But I do think that the purpose of the whole law of admission could be defeated if he could put in any self-serving statements to offset the admissions. He must go on the stand.

THE COURT: Don't you mean independent self-serving statements?

MR. ANDERSON: No, I mean self-serving statements in connection with the same matter, because the purpose of the admission is merely to show that he said that at a certain time. He can go on the stand and explain it.

THE COURT: Apart from that—I think I will be very glad to hear you on that at the time of final argument—but that would be excluding testimony offered by Mr. Kresel. If Mr. Kresel offers it, I am going to let it go in and determine in the final argument as to whether it has any value. I have thrown the door wide open. You have been the judge of the admissibility of all your evidence in this case. I have not kept out one syllable or one letter or one paper. I am going to continue to let you be the judge of the admissibility of all evidence that I am going to receive on the record in this case, every bit of evidence you offer and I am going to sustain any objection to any evidence. That has been the rule in the past, with one exception; and I have changed that exception.

MR. ANDERSON: Now, if your Honor please, may I make this suggestion?

THE COURT: Yes.

MR. ANDERSON: I recognize your Honor's ruling and of course I have no comment to make on that. But there are certain questions, even under so broad a rule, that I do not understand your

Honor would permit me to ask or Mr. Kresel. For instance, if I asked a distinctly leading question, your Honor would strike it out because that would be an improper method of examination. I also think that if we objected to secondary evidence, it would not be allowed.

THE COURT: I have not yet said that a single scintilla of evidence offered by you has any bearing.

MR. ANDERSON: I understand, sir. I am not speaking of value.

THE COURT: But that question raises a question of value. I do not mean to suggest for a minute that any evidence that Mr. Kresel puts in will be worth anything or will be legally admissible. But I do not intend in this case to have you restricted in any way whatsoever in presenting the evidence which you think will support your contention. I may have one idea as to its value; the Court of Appeals may have another and the Supreme Court possibly may have another.

I shall let you read from those books and spread on this record any portions thereof that you desire, and I will meet the other question when I come to it, with the thought, however, now expressed that I shall permit Mr. Kresel to read any portions thereof that he sees fit, of any statements made by Mr. Garvan at the same inquiry and investigation by Congress.

Do counsel mind sitting a quarter of an hour later this afternoon and taking the noon recess now?

MR. ANDERSON: Not in the slightest. I would rather do that, because your Honor's statement that you are not going to control the evidence at all has embarrassed me a little. I mean as to the extent of the proof.

THE COURT: No, I did not mean that. I mean that I am going to allow you to put on the record any facts or any evidential facts which you want, but I do not mean to say that you can be otherwise the determining factor.

MR. ANDERSON: I mean the method of proof and rulings as to secondary and primary evidence.

THE COURT: If you should put in secondary evidence without the consent of the other party, I should let it go in, but then I should hold on final hearing that it is not worth anything because it was not by consent. You could put it on record, however, and some other Court may give it some value.

MR. ANDERSON: If it is obviously inadmissible evidence, I hope your Honor will rule it out, so that we would not go up to another Court with something that was worthless.

THE COURT: I hope I have indicated my views pretty completely so as not to lead you into any misconception.

MR. ANDERSON: You are entirely clear, your Honor, I will take this matter up after luncheon, and in view of Mr. Kresel's statement that he will put Mr. Garvan on the stand—

THE COURT: Mr. Kresel has served notice on you that he will move for dismissal at the end of your case.

MR. ANDERSON: I hope he will. I will be glad to meet him on that issue right now.

THE COURT: I do not mean to pass on that. But if you are going to withhold this on the possibility that Mr. Garvan would be available to you, I wanted you to have that in mind. I do not know that he will make the motion, but I did not want you to be under any misconception.

MR. ANDERSON: If Mr. Kresel can induce the

Court to dismiss and close his case by resting now, I would very much prefer to go upon the record as it is now without Mr. Garvan's statement than to have him put on the stand.

THE COURT: I do not want any application for a re-opening of the case after you have rested. I have had that experience recently. We will take a recess until 1 o'clock Standard time.

AFTER RECESS

MR. ANDERSON: If your Honor please, before adjournment your Honor said that you would permit the reading of these statements which we desired to introduce by way of admissions, reserving the question as to the right to read others when calling the witness, and, therefore, I will proceed to read them.

THE COURT: They have not been marked. Will you let the clerk mark them?

MR. ANDERSON: They are short, and I thought I would read them to the stenographer and let them get in evidence and identify what they are.

MR. KRESEL: I will accede to that procedure.

MR. ANDERSON: They are very short.

THE COURT: You may proceed with that.

MR. ANDERSON: I now desire to read in evidence, on behalf of the plaintiff, certain statements claimed by the plaintiff to be admissions from testimony of Honorable Francis P. Garvan, given before the Committee on Ways and Means of the House of Representatives, in the hearing on H. R. 2,706, "A Bill to amend an Act entitled An Act to increase the revenue and for other purposes," approved September 8, 1916 and H. R. 6, 495, "A Bill to regulate the importation of coal-tar products to promote the establishment

of the manufacture thereof in the United States" and as an incident thereto to amend act of September 8, 1916, entitled "An Act to increase the revenue and for other purposes," which hearings were held on June 18th to 20th, and July 14th to 18th, 1919.

Under the stipulation of counsel filed at the beginning of this case, your Honor will recall that it was agreed that evidence given at these hearings would be considered as formally proved without calling witnesses to prove the same, but subject to the limitations in said stipulation contained; and I have therefore identified the evidence in that way.

MR. KRESEL: Well, Colonel, the stipulation was that either side could refer to these reports of the Congressional proceedings without being required to call the stenographer and prove that such statements and testimony were made or given. That is the entire scope of the stipulation. We did not stipulate that you may read them.

MR. ANDERSON: No, but it was provided in the stipulation that such statement did not limit the right to any legal use that might be put to this evidence in the event it had been formally proven.

THE COURT: I understand you to mean that the stipulation meant that you need not formally prove it, but the stipulation did not concede the relevancy or the materiality or anything of that sort.

MR. ANDERSON: That is right, subject to that exception, and it merely covered the formal proof and without limitation of any legal use, subject to the determination of the Court.

THE COURT: Is that right, Mr. Kresel?

MR. KRESEL: That is quite right. Now Colonel, you started out by saying that you were

going to read from the testimony of Mr. Garvan.

MR. ANDERSON: I will correct that by saying the statement of Mr. Garvan. Some of it was sworn to and some was not.

MR. KRESEL: He was not sworn in that proceeding.

MR. ANDERSON: I have not finished identifying it. The statement of Mr. Garvan, from which the matter will be read, which we claim to be an admission applicable to this case, was a statement given before the Committee of the House of Representatives indicated above on July 14, 1919, and will be found at pages 222 to 256 of the official print of that hearing.

MR. KRESEL: Pardon me, Colonel, but there are other pages in that proceeding where Mr. Garvan made statements.

MR. ANDERSON: I think that is so. I was going to refer to them when I came to them. But I will now read from this statement. It will be easy to identify them when I come to them. At the beginning of his statement at page 222, Mr. Garvan identifies himself as Alien Property Custodian, which office he then occupied. At page 245 this statement is made: a question by Mr. Green:

> "I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.
>
> "MR. GARVAN: I was illustrating."

MR. KRESEL: In order to make the subject matter that you are about to read intelligible, do you not think it is wise to go back several questions to see what was the meaning of the question wherein Mr. Green said he was asking Mr. Gar-

van about efficiency? If you leave it to just that one question and answer, it will have no meaning. However, if you insist upon reading it that way, that is your privilege, I assume.

MR. ANDERSON: There was some personal controversy between Mr. Garvan and Mr. Green and I wanted to avoid that.

MR. KRESEL: You can omit that, Colonel, but if you look at page 244, you will see at the top of the page, beginning with a question by Mr. Moore, that question and Mr. Garvan's answer; then the question by Mr. Kitchin and Mr. Garvan's answer; and if you read those, you will see the connection with what you want to read at 245.

MR. ANDERSON: What counsel has said is dealing with another matter, and I will ask leave to read it as it stands.

THE COURT: Read such portions as you desire, Colonel Anderson.

MR. ANDERSON: Mr. Garvan replied: "I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project—

"MR. GREEN (interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that

same argument the Chemical Foundation would not know what the situation was.

"MR. GARVAN: To the capacity of the industry you will find in the charter."

THE COURT: You are putting into the record that Mr. Green was a representative?

MR. ANDERSON: Well, Mr. Green was a representative of the Committee. I think that will be admitted, Mr. Kresel?

MR. KRESEL: Yes.

THE COURT: Do you want his statements to go in too?

MR. ANDERSON: Only to the extent necessary to clarify the statement of Mr. Garvan. It has no evidential value whatever, sir, his statement, except to explain Mr. Garvan's statement there. I will next read from page 265 of the same report, Mr. Kresel, being the further statement of Honorable Francis P. Garvan, Alien Property Custodian, taken on the 15th day of July, 1919, at the same hearing. I will begin with the question by Mr. Moore in order to lead up to Mr. Garvan's statement. You will concede that Mr. Moore was the Chairman of the Sub-Committee?

MR. KRESEL: I do not know whether he was the Chairman or whether he was one of the members.

MR. ANDERSON: Or a member of the Committee.

MR. HERSHKOPF: He was not the chairman. Mr. Fordney.

MR. KRESEL: He was not the Chairman, I am told. Mr. Fordney. Mr. Fordney was the Chairman, I understand.

MR. ANDERSON: Question by Mr. Moore, a member of the Committee:

"MR. MOORE: Yes; there was a good deal of that. We gave the President a great deal of power when we voted because of the urgency of war. The urgent deficiency bill approved March 28, 1918 (which was one of the bills to which Mr. Palmer had a rider attached), provided—

"That any property sold under that act, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefor, in the public interest shall otherwise determine.

"So that Congress, when it was induced to give this additional power, provided when this property was taken over from German owners it should be sold in the open, an open covenant openly arrived at, as it were, and not at private sale. Yesterday you stated that the property generally had been sold at public sale, and I asked you to be particular about that statement, because I intended to ask you some questions. I think at first you said all the property had been sold at public sale.

"MR. GARVAN: Practically all; and that is true, too. There was a provision covering private sales under $10,000 of commodities and things of that kind—

"MR. MOORE: Yes. I want to draw attention to that, because I think it is important.

"MR. GARVAN: Certainly. I am having an exact detailed statement prepared for you as to everything whatever that was sold except the commodities. You do not want to be burdened with that?

"MR. MOORE: If you will put that in the record later on, I will be pleased.

"MR. GARVAN: They would not reach more than five or six. I do not think they would reach more than one or two where the property was not sold to the United States Government."

MR. ANDERSON: At page 272 of the same report the same member of the committee, Mr. Moore further inquiring of Mr. Garvan, the following statement is made:

"MR. MOORE: You were not Alien Property Custodian at that time?

"MR. GARVAN: No.

"MR. MOORE: Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"MR. MOORE: Mr. Ramsay Hoguet?

"MR. GARVAN: Yes.

"MR. MOORE: Who is associated with Mr. Choate as counsel of The Chemical Foundation (Inc.), of which you are president?

"MR. GARVAN: He is not associated with Mr. Choate, but he is our patent counsel.

"MR. MOORE: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"MR. GARVAN: Yes.

"MR. MOORE: Of The Chemical Foundation (Inc.), of which you are president?

"MR. GARVAN: Of The Chemical Foundation (Inc.), yes. And, furthermore I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I read from the same statement, at page 296 of the same report, certain questions by Mr. Longworth, who, I presume, will be conceded to have been a member of the Committee?

MR. KRESEL: Yes.

MR. ANDERSON: And answers by Mr. Garvan. I will read the questions to the end that the meaning of the answers may be more apparent:

"MR. LONGWORTH: That is to say that all the surplus you will receive, left over after paying the stockholders"—

MR. KRESEL: Pardon me a moment, I can not find that. I can not follow you. Page 296, you said?

MR. ANDERSON: Page 296.

MR. KRESEL: Oh, yes, thank you; I have it.

MR. ANDERSON: I will re-read:

"MR. LONGWORTH: That is to say that all the surplus you will receive, left over after paying the stockholders the maximum amount that is permitted, is devoted to the extension of chemistry, and particularly organic chemistry?"

I presume it will be conceded that the reference there is to the surplus of The Chemical Foundation?

MR. KRESEL: Yes.

MR. ANDERSON: Without reading the preceding—

MR. ANDERSON: (continuing)

"MR. GARVAN:

"Organic chemistry, yes; we will offer scholarships in the colleges. We hope to offer courses in dye manufacturing for the students, and while they are in college give them a course of two or three months in the chemical laboratory, which the colleges are very anxious to do during the four years that they are in the courses.

"Dr. Herty hopes that we can establish a great central medical laboratory for the investigation of all kinds of drugs, and have an increased fight for the purity of medical drugs. It is all a question of how much money comes in; it may not be a tremendous amount. We have practically 4,000

patents, which is a large number, but a great majority of them will amount to nothing at all. We just took the list of patents applying to all chemical subjects which were German-owned; the main source of income will be the vat dyes, and what that will amount to all depends upon the development of American manufacture, and how far they are able to develop it. If this bill were not passed, the money would immediately begin to pour into the Chemical Foundation, because the German plan was to flood our markets with their 20,000 tons of dye, which they are ready to send in here, and much of which came under our patents. On them we would be able to collect whatever fees we saw fit to collect from the Germans, so the passage of this bill cuts our income entirely down to the possibility of American development of these dyes. But as regards most dyes, of course, we have not patents covering them.

"MR. LONGWORTH. That is what I wanted to get at.

"MR. GARVAN. All the dyes practically, made in America today are without patent.

"MR. LONGWORTH. That is what I wanted to get at now. Of the 4,500 patents at least the ones that are of real value here, practically, relate to the vat dyes?

"MR. GARVAN. The vat dyes.

"MR. LONGWORTH. And which are not made in this country?

"MR. GARVAN: Not made in this country.

"MR. LONGWORTH. And are of great value to the American manufacturers?

"MR. GARVAN. Tremendous; that is the first aim.

"MR. LONGWORTH. Almost a necessity for certain kinds of cloth, are they not?

"MR. GARVAN. They certainly are.

"MR. LONGWORTH. And Germany has, as you said some 20,000 tons ready to ship into this country, either from Germany or through Switzerland?

"MR. GARVAN: Or through Holland.

"MR. LONGWORTH. That would practically prevent the development of the vat dyes in this country?

"MR. GARVAN. Certainly; to make vat dyes one company alone has already expended $1,800,000 without return.

"MR. LONGWORTH. Whereas, if an opportunity of four or five years were given to develop under these patents, for America to develop these vat dyes with a reasonable tariff, thereafter we would undoubtedly be able to exist as against Germany or any other country?

"MR. GARVAN. Certainly."

MR. KRESEL: Let me know if you are through reading.

MR. ANDERSON: One more.

MR. KRESEL: I mean from those two pages.

MR. ANDERSON: Yes.

MR. KRESEL: I do not want to interrupt, but I think you want to be entirely fair to Mr. Garvan and everybody else. You will concede, will you not, that notwithstanding Mr. Garvan's statement there that the passage of this bill that is being considered would cut from the income of The Chemical Foundation very largely, that notwithstanding that, he was in favor of the bill?

MR. ANDERSON: I will concede that, if it is agreed that that was a bill for the licensing or embargo on the importation of these dyes.

MR. KRESEL: I will go this far, Colonel. I will consent that you put in the proposed bill and that will speak for itself.

MR. ANDERSON: I do not mind you putting it in, although I have not read it. It is a public document of which the Court will take judicial notice in any event. The bill will be found in the Congressional Record. Can't we refer to it as we wish?

MR. KRESEL: Yes. If you will identify it, Colonel, of course we can refer to it.

MR. ANDERSON: It is identified by the bill numbers which I have already put in the record. The bill was not passed.

MR. KRESEL: That is correct. I understand it was passed by the House but not by the Senate.

MR. ANDERSON: It never became a law. That is what I mean.

I will next read certain statements of the Honorable Francis P. Garvan which were made in hearings before the Committee on Finance of the United States Senate, Sixty-sixth Congress, Second Session, on H. R. Bill 8078 entitled, "An Act to Regulate the Importation of Coal-tar Products; to Promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the Act of September 8, 1916, entitled 'An Act to Increase the Revenue, and for other purposes' ", which hearings took place at various dates from December 8th, 1919 to January 12th, 1920, and I shall read from the official Government publication of these hearings.

MR. KRESEL: I am informed, Colonel, that this hearing which you are about to read from was a hearing before the Senate on the same bill that had passed the House and as to which you have just read some testimony.

MR. ANDERSON: If that is the fact, it will be conceded, and that the bill was not passed by the Senate.

MR. KRESEL: Not passed by the Senate.

MR. ANDERSON: Very good. That is conceded.

At Page 520 of the official report, appears the statement of Honorable Francis P. Garvan, Alien Property Custodian. There was a question asked

by Senator Calder, who in the absence of objection I will state was a member of the Senate Committee before whom the matter was being heard:

"SENATOR CALDER. I would like, if you will, to tell me how it was organized, and how the capital stock was arrived at, and what was paid for the patents?"

You will concede, Mr. Kresel, that "it" there refers to The Chemical Foundation, Incorporated, the defendant?

MR. KRESEL: Yes.

MR. ANDERSON: Mr. Garvan in reply:

"Having all this history, which I have only touched upon and picked out the salients without bothering you with the other, before me, the situation is this: We saw these patents there, which were of no benefit as they stood. It would be of no benefit to the duPont's or anybody else to develop them, if after the war Germany could come over and exercise the rights under the patent. So they had to be sold. They could be given to the country, but that wouldn't attain any purpose at all, because there would be nobody to enforce them as against Germans bringing goods in under them after the war. They would be just like patents under discoveries of people in the Patent Office, or people in the Department of Agriculture —they go fallow until some smart German comes along, takes them over to his laboratory in Germany, makes some little addition, and then makes them a going concern. We looked around. There was no institution that we could sell them to. Our attention was first attracted to it and to the danger we were in when we sold Bayer & Co. We had no thought of it before. Bayer had a number of patents. And right there I might add, the number of patents does not of itself amount to anything. A company may have a hundred patents around one compound. But they are very valuable when properly protected and put to use. We sold Bayer & Co. That was a going concern. That was the

only concern that had any real property. It was at Renssalaer, New York. They had quite a big property and a tremendously valuable establishment, the aspirin business. They were making great big money. We sold it, I think for $5,400,000. The Sterling Products Co. are conducting the drug end, and the Grasselli Chemical Co. are taking the dye end of the patents, etc. We saw this situation. Here was the Grasselli Chemical Co., a great, big, powerful corporation, and they could go ahead, but there was no property attaching to the other patents, no buildings, or machinery, or organization, or anything. They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business.

"So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasi-public corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is The Chemical Foundation. We have licensed six people to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think altogether."

At Page 521 of the same report, a question by Senator Calder as follows:

"Will these patents be of any great value some day?"

"Mr. Garvan. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come

in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to The Chemical Foundation to urge the licensing system, but that is not the reason for Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one—

"SENATOR CALDER (interposing). The most valuable patent?

"MR. GARVAN. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilities would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture it safely.

"The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

"Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him two per cent, three per cent, or five per cent, just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent royalty."

I next read similar statements of Mr. Garvan from his testimony given, as the record shows, in

hearings before a Sub-Committee, of the Committee on the Judiciary, United States Senate, Sixty-seventh Congress, Second Session, pursuant to Senate resolution 77, creating a Special Committee to investigate the expenditures made on behalf of various propaganda and in the maintenance of lobbies in Washington.

I read from the official Government report, a volume entitled "Alleged dye monopoly."

In this instance the record will show, and I think counsel will agree that The Chemical Foundation and the American Dyes Institute were being investigated, or at least their activities and organizations were under investigation.

MR. KRESEL: Except in so far as you may show that by witnesses, I will not concede that at all.

MR. ANDERSON: I will read; the evidence is simply with reference to the resolution. I shall read from the testimony of Mr. Francis P. Garvan, given before the Committee on March 6, 1922, at Washington.

MR. KRESEL: Page 203, Mr. Garvan's statement starts.

MR. ANDERSON: It starts?

MR. KRESEL: Yes, it starts at page 203.

MR. ANDERSON: Thank you. At page 203 of this volume; evidence was taken on March 1, 1922; and he was asked by the Chairman of the Committee, after he was sworn:

"And your present connection with the matters under consideration is what?

"MR. GARVAN: President of The Chemical Foundation, and I might add, former Alien Property Custodian." At page 393, Mr. Garvan, in reply—

MR. KRESEL: Page 390?

MR. ANDERSON: Page 393; or page 392, I will

begin there, at the bottom of the page; Mr. Garvan is asked by the Chairman:

"And you became the President of the Chemical Foundation when?

"MR. GARVAN: I was the president from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was president of The Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice, and thus build up, if possible, the chemical industry in this country.

"THE CHAIRMAN: You may go on with your statement.

"MR. GARVAN: The question of the compensation to be paid for those patents to The Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to The Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get 5 cents for it."

At the bottom of the same page 393, Mr. Garvan, proceeding to discuss this matter, said:

"Senator King mentioned one manufacturer that he thought had been refused a license, but that was just some argument as to the terms with

the Dow Chemical Co., who are one of our own stockholders, and which occurred a couple of years ago. But immediately upon our sitting down and talking over the situation the Dow Chemical Co. agreed to our conditions. It was nothing but an ordinary business argument at the time.

"We have never refused a license, with the exception of this one I referred to a moment ago, in a history now of three years that the Foundation has been running. And, furthermore, we have never given an exclusive license. We have never given a license that varied in its terms as between one and another on an article to be produced. Our rates vary on different patents, of course; some licenses are only for one-half of 1 per cent royalty or 1 per cent royalty, but all are based upon the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate patents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European War possible.

"THE CHAIRMAN: And The Chemical Foundation still owns these patents?

"MR. GARVAN. Yes, sir; and there are 110 of them. They were grouped together, and we speak of them as one patent.

"THE CHAIRMAN. Speaking of that group of nitrate patents as one, have any licenses been granted for the use of that patent?

"MR. GARVAN: Yes; we have worked hard to get anybody or everybody to go into that matter. We finally got the Semet-Solvay Co., a company up in northern New York, which is a branch of the

Allied Chemical Co., interested in the matter. They put in millions of dollars and built a plant, and are making ammonia from the air now, under our patents. And their license fee was nothing until a year after they were operating, so anxious were we to get them started. That means the Muscle Shoals plant would have the same license."

And further on in the same page—

MR. KRESEL: Would you mind reading the next two or three sentences?

MR. ANDERSON: I will read them for you if you want them. They are purely speculative. Yes, I will read on if you wish it, the record showing that you requested it:

"THE CHAIRMAN: That is a branch of the Government?

"MR. GARVAN. If they are a branch of the Govenment, they would not pay anything. That is the provision in our charter.

"THE CHAIRMAN. Manifestly, if the Government saw fit to go forward and develop Muscle Shoals it could make use of the patents free?

"MR. GARVAN. Yes, sir; that is another provision of the sale. As I say, the first element that went in to the making of dyes, and they are purely speculative, was the fact that we must license everybody and therefore would give no one a natural monopoly of a patent. The second provision was that we must give a license to the Government free; not only to the Government, but I understand to anybody manufacturing for the Government. So that if the Government makes a contract with anybody for anything covered by our patents, there is no license fee either payable by the Government or by the manufacturer under his contract with the Government."

MR. KRESEL: Will you read the next paragraph there?

MR. ANDERSON: No, I do not want to go into

that other subject, because it is entirely outside, and relates to the Government and its license.

MR. KRESEL: It relates to what?

MR. ANDERSON: It relates to licensing the Army and Navy, which I do not want to go into.

MR. KRESEL: Pardon me a minute, does it not relate to the others?

MR. ANDERSON: It relates to two sets of patents and undertakes to tell what a license was to the Army and Navy. If your Honor please, the license has been handed around—

MR. KRESEL: I do not want to insist if you do not care to read it, Colonel.

MR. ANDERSON: And I prefer to have the license itself say what the license was.

MR. KRESEL: All right.

MR. ANDERSON: I am perfectly willing to put the license in or willing to have you put it in.

MR. KRESEL: Would you mind putting it in?

MR. ANDERSON: No, I won't put it in my evidence—as your evidence.

MR. KRESEL: I thought you said you would be willing to put it in.

MR. ANDERSON: No, I have all the evidence I want on that subject. There were some intervening questions and Mr. Garvan then made the following statement——

MR. KRESEL: On what page?

MR. ANDERSON: Right down below on the same page:

> "Yes, sir; and that applies to anybody"——

MR. KRESEL: Wait a minute. Hadn't you better read the question to which that is an answer?

MR. ANDERSON: Very well:

> "THE CHAIRMAN. Without accounting to The Chemical Foundation."
>
> "MR. GARVAN. "Yes, sir"——

MR. KRESEL: That does not mean anything.

MR. ANDERSON: Mr. Kresel, I am perfectly willing that you put in this evidence in your own way, but I am putting in mine, you know, and I cannot read the whole record. Mr. Garvan's statement, which is the only admission which has any weight in evidence, is this:

> "MR. GARVAN. Yes, sir; and that applies to anybody that manufactures for them. So that these two elements, as you can see, take out of these patents all their speculative value for an independent holder. And then, to make sure that no one should make anything out of this proposition, all the stock was first underwritten by a group of manufacturers in the Dyes Institute. The Chemical Foundation was capitalized at $500,000; $250,000 was arbitrarily decided upon and paid over to the United States Government, into the Treasury of the United States. The balance, $250,000, was kept for working capital—well, it was not quite that much, because we never sold quite all our stock. The total stock I believe was $428,900."

I think that is all that I wish to read from Mr. Garvan's statement.

MR. KRESEL: If your Honor please, I have had no opportunity since Colonel Anderson intimated his purpose to read from these three proceedings, to read Mr. Garvan's full statements in those proceedings so as to determine what portions thereof I desire to read, and I would ask your Honor to give me until tomorrow morning within which to make up my mind as to what I do want to read, and I shall ask then, tomorrow morning, for the right to read so much of Mr. Garvan's statements before these committees as I deem necessary to read and portions of which have already been put in by Colonel Anderson.

THE COURT: You may have not only until tomorrow morning, Mr. Kresel, but you may not read it at this time, in any event, over the objection of Colonel Anderson; but you may have until you finally close your evidence to determine whether there are any portions that you want to read.

MR. ANDERSON: I entirely agree.

MR. KRESEL: The reason I said tomorrow morning, your Honor, was because in my view of our rights in the matter I have the right to read any portions of Mr. Garvan's statements upon the plaintiff's case, and that is the reason I desired to do it before the Government closed its case, and I shall undertake to do it tomorrow morning.

MR. ANDERSON: Of course, your Honor, we do not concede that, but I presume that question will come up at the proper time. By the way, Mr. Kresel, you may have understood me to speak impatiently just now, but I did not intend it that way.

THE COURT: You can make your application at the proper time, Mr. Kresel, but I do not understand that the reading of a portion of the statement at this time by Colonel Anderson gives you a right to read any other portion. Your redress at this time will be that which in effect is denied to you now, and that is to strike out, but we will meet the real question if and when you present it.

MR. ANDERSON: At this time, if your Honor please, I wish to offer in evidence certain Executive orders of the President that we spoke of this morning. They were entered prior to the 3rd day of December, 1918. I offer in evidence an Executive order of President Wilson, dated The White House, the 24th of April, 1918.

MR. KRESEL: On what page is that?

MR. ANDERSON: Page 44. It is No. 2846, entitled, "An Executive order concerning a sale to be conducted by the Alien Property Custodian pursuant to the Trading with the Enemy Act and amendments thereof," which is read in evidence as Plaintiff's Exhibit 193.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 193." (*See Exhibits, Vol. I, page 460.*)

MR. ANDERSON: I offer in evidence an Executive order of the President——

MR. KRESEL: You might offer all of these orders, just giving the page where they start and the page where they end, just as I did as to Mr. Polk's.

MR. ANDERSON: How would it be to do this: If you agree that we may read from any of the Executive orders appearing there at any time?

MR. KRESEL: Yes.

MR. ANDERSON: In order to shorten the record, it is stipulated in open Court by the solicitors for the respective parties, that the solicitors for the respective parties in this case may read from and use to the same extent as if the same were formally introduced in evidence any and all Executive orders and the orders of Honorable Frank L. Polk contained in a publication entitled "Trading with the Enemy Act," which has been marked by the Clerk as Plaintiff's Exhibit No. 1, either in this Court at this trial or at any re-trial thereof, or in any Appellate Court on any hearing thereof. Is that agreed?

MR. KRESEL: That is all right.

MR. ANDERSON: That is agreed.

MR. KRESEL: Of course, Exhibit No. 1 is only one order in that book.

THE COURT: He means the book containing Exhibit No. 1.

MR. KRESEL: Yes.

MR. ANDERSON: The book containing Exhibit No. 1. That will save us all some time, sir.

GEORGE W. STORCK.

GEORGE W. STORCK, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and your place of residence?

A. George W. Storck, Hasbrouck Heights, New Jersey.

Q. 2. What is your business or profession?

A. I am a Certified Public Accountant, in the employ of the Department of Justice, Washington.

Q. 3. How long have you been connected with the Department of Justice?

A. Since 1910.

Q. 4. As an Accountant, Official Accountant of the Department?

A. Yes, sir.

Q. 5. How long have you been a Certified Public Accountant and under the laws of what State?

A. Under the laws of the State of New Jersey, since 1904.

Q. 6. You have been constantly engaged in the practice of your profession from that time down to the present?

A. Yes, sir.

Q. 7. Have you in connection with your duties had occasion to examine the accounts of large corpora-

tions in connection with Government matters, and testifying in Court?

MR. KRESEL: I will concede this gentleman's competency.

MR. ANDERSON: Very good, sir.

THE COURT: The question is withdrawn.

MR. ANDERSON: Yes. The question is withdrawn.

Q. 8. Mr. Storck, have you made an examination of the records and accounts of the Alien Property Custodian to ascertain what, if any, payments have been made to the Alien Property Custodian under contracts with respect to patent rights seized by the Alien Property Custodian and transferred to The Chemical Foundation as set out in Exhibit G with the Bill of Complaint in this case, with which I understand you are familiar?

A. I have.

Q. 9. You are familiar with the contracts to which I refer as described in the schedules of Exhibit G with the Bill of Complaint in this case?

A. Yes, sir, contract rights assigned.

Q. 10. Yes. Will you please present, if you have one, a statement showing the earnings under those contracts which were so seized and transferred?

MR. KRESEL: Before this witness proceeds further, your Honor, I desire to have a stipulation with the Government that whatever testimony is here given with reference to these contracts and with reference to the Federal Trade Commission licenses which I understand is another subject which you will take up with this witness——

MR. ANDERSON: Yes.

MR. KRESEL: ——is to be without prejudice to this defendant in any other litigation. I make this request, because as Colonel Anderson knows, there are many suits now pending in various

Courts all over the country, and I think one in your Honor's Court, involving the question of ownership of these license moneys or some of them, and I do not desire to run the risk of having some one of the Government hereafter claim that the matter will be *res adjudicata* between the parties upon the questions that are here involved.

Is there any objection to that, gentlemen?

Mr. Anderson: None whatever, Mr. Kresel; and I am perfectly willing, in response to Mr. Kresel's statement, to say that in consideration of our agreeing that this evidence is solely for the purposes of this case so far as the Government is concerned, he has waived certain requirements as to technical proof, and therefore I think it is entirely proper that that should be understood.

Mr. Kresel: Please, Colonel Anderson, put it on a different footing.

Mr. Anderson: I wanted to protect you by saying you had done it for a consideration, so it would be binding on the Government.

Mr. Kresel: I have not done it for any consideration at all. I have waived and shall waive any question of formal proof here because I want to facilitate the Government, and do not want to stand in the way of proving its case in its own way.

The Court: In any event, it is stipulated that the testimony now given is not available for use in any other suit, and is solely in examination and cross-examination restricted to the purposes of this suit.

Mr. Kresel: That is right.

Q. 11. Then, Mr. Storck, will you present the statement to which you refer? (Witness hands statement to Mr. Anderson.)

Q. 12. Mr. Storck, you have presented to me a

statement entitled, "In re Chemical Foundation, Statement of Monies received by Alien Property Custodian on account of the following described contract rights assigned by A. P. C. to Chemical Foundation?"

A. That is correct.

Q. 13. Did you make up that statement from the records of the Alien Property Custodian?

A. Yes, I did.

Q. 14. You can testify to its correctness from those records yourself, can you?

A. I can.

Mr. Anderson: I will offer the statement in evidence as Plaintiff's Exhibit No. 194, that it may now be identified.

Mr. Kresel: Before that is received, your Honor, we specifically raise the question that this statement is inadmissible because it is irrelevant and immaterial. I take no objection to its competency, because it has not been proved by the books; upon the ground that it is an effort to thereby ask the Court to go behind the determination of the President and the Alien Property Custodian as to the price at which this property was to be sold, and was sold; and further, we object to it upon the ground that the amounts listed on that statement are amounts which cover the period both prior to April 10th, 1919, when the assignment was made to the defendant, and subsequent thereto; our point being that if the evidence is admissible at all, its sole materiality can be only upon the question of value, and that if that be so, that then only the receipts prior to the date when we took the assignment can be of value, because whatever happened afterwards, that is hindsight and not foresight. We could not tell in advance what would happen afterwards; so I say that if it is admissible at all, only that portion

of it that purports to show what the receipts were prior to the 10th of April, 1919, is admissible.

Furthermore, Colonel, I think that our stipulation is that it should be made to appear that since the date that the Chemical Foundation has owned these contract rights, its sole return thereon has been the sum of $2,442.06. Is that correct, Colonel?

MR. ANDERSON: Yes; I will have the witness say that in a moment.

By MR. KRESEL:

Q. 15. That is correct, Mr. Storck?

A. Yes, that is correct.

MR. KRESEL: And further, Colonel, that of the sums shown on that statement that you are now offering, no part thereof has ever been received by The Chemical Foundation, or claimed by it?

MR. ANDERSON: I understand that to be the truth; is it not?

THE WITNESS: I so state, yes, sir.

MR. ANDERSON: He can testify to all those facts. I will bring them out. I want to get the statement identified.

THE COURT: Admitted under the general rule of practice adopted in this case.

Received in evidence and marked "Plaintiff's Exhibit No. 194." (*See Exhibits, Vol. I, page 463.*)

By MR. ANDERSON:

Q. 16. Mr. Storck, I will ask you whether or not the amounts shown on this statement, Plaintiff's Exhibit No. 194, were all earned prior to the assignment of these contracts to The Chemical Foundation?

A. They were not.

Q. 17. How much was earned afterwards?

A. May I take the statement a moment.

Q. 18. Yes, sir. (Statement handed to witness.) How much was earned before and how much was earned after?

A. From December 31st, 1917, down to and including June 30th, 1920, the total amount of royalties earned were $152,801.77, of which there should be deducted an item of $30,000, which was moneys received on Trust No. 12,681, of the American Kitchen Products Company, which was a payment on principal. That would leave the amount of $122,801.77.

Q. 19. Was that last amount that you have named all earned before assignment to The Chemical Foundation?

A. Before April 10th, 1919, I think it was.

Q. 20. Could you state how much The Chemical Foundation had received on account of these contracts subsequent to the assignment to the Foundation?

A. They received nothing.

Q. 21. I thought you said they received——

A. Only that $2,246.

MR. KRESEL: No. The correct amount is $2,442.06.

THE WITNESS: That is correct.

Q. 22. That is the amount then received from these contracts since they were turned over?

A. Yes, sir.

Q. 23. As I understand it——

MR. KRESEL: Pardon me a moment, so as to get it entirely straight. When you say "since," you mean from April 10th, 1919, to December 31st——

THE WITNESS: 1922; as shown on the books of The Chemical Foundation, not here.

Q. 24. Shown on the books of The Chemical Foundation?

A. Yes, sir.

Q. 25. You have also examined the books of The Chemical Foundation, have you not?

A. I have, yes, sir.

Q. 26. Now, going back a moment to the item of the net balance of $122,801.77, which you arrive at after deducting the $30,000, that appears to have been paid on account of principal, from the $152,801.77, accrued to the Alien Property Custodian?

A. Yes, sir.

Q. 27. Can you say whether any part of this amount which was in the hands of the Alien Property Custodian has ever been paid over to The Chemical Foundation?

A. It has not.

MR. ANDERSON: That answers your question, does it not?

Q. 28. Do the records show that so much has been paid and is still in the Treasury of the United States?

A. Still in the Treasury of the United States.

Q. 29. You referred to one trust under which certain payments were made apparently on account of principal?

A. Yes, sir.

Q. 30. You mentioned it as the American Kitchen Products Company, contract dated May 10, 1909. Can you turn to page 339 of the Bill of Complaint in this cause and to the Exhibit G therewith, which has been introduced in evidence, Schedule 10 of said exhibit, and identify the contract to which you refer?

A. That is the contract that I refer to.

Q. 31. The one at the bottom of page 339?

A. Yes, sir; a contract between Karl W. Rademacker and the American Kitchen Products Company, dated May 10, 1909.

MR. ANDERSON: I would like at this time, for the orderly presentation of the evidence, to offer in evidence a copy of contract between Karl W.

Rademacker and the American Kitchen Products Company dated May 10, 1909, entitled "Steero," which will be described in Schedule 10 of Exhibit G with the Bill of Complaint which has been introduced in evidence. Counsel have very kindly agreed to furnish it tomorrow morning and we agree that it be handed to the Clerk then.

THE COURT: Let it be admitted under those conditions.

Received in evidence and considered marked "Plaintiff's Exhibit No. 195." (Same as Plaintiff's Exhibit No. 402. *See Exhibits, Vol. I, page 720.*)

MR. KRESEL: Now, Colonel, in order to complete our understanding, will you also state that you will introduce, as a portion of this witness's testimony and in connection with this contract matter, a statement showing the expiration dates of these various contracts, as to which that statement appears?

MR. ANDERSON: Yes. I also offer in evidence a statement compiled by the witness in co-operation with a representative of the defendant showing the expiration dates of these various contracts assigned by the Alien Property Custodian to The Chemical Foundation as described in Exhibit G to the Bill of Complaint and which are referred to in the statement just filed by the witness showing the earnings thereof, which has been marked Plaintiff's Exhibit 194.

THE COURT: Which will be produced at a subsequent time.

MR. ANDERSON: Yes.

THE COURT: Admitted.

Received in evidence to be marked "Plaintiff's Exhibit No. 196." (Withdrawn as embodied

in Plaintiff's Exhibit No. 400. *See Exhibits, Vol. I, page 699.*)

Q. 32. Mr. Storck, have you a certified statement of the details of the accounts of the Alien Property Custodian from which the compilation, which you have presented and which has been introduced as Plaintiff's Exhibit 194 was made?

A. Yes, sir; I have a certified statement here.

MR. ANDERSON: We now offer in evidence a statement consisting of seven typewritten sheets of the details which the witness has testified were the basis of making up the compilation already introduced, accompanied by the certificate of H. W. Schmito, Assistant Chief, Division of Trust, Alien Property Custodian, dated August 17, 1922, and ask that it be identified and read as Plaintiff's Exhibit 197.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 197." (*See Exhibits, Vol. I, page 465.*)

Q. 33. Mr. Storck, have you made an examination of the books and records of the Federal Trade Commission to ascertain what their records show as to earnings from licenses issued by the Federal Trade Commission on patents subsequently received and transferred to The Chemical Foundation, Incorporated?

A. Yes, sir, I have.

Q. 34. Have you prepared a compilation of the earinngs from royalties or other sources under the licenses issued by the Federal Trade Commission under patents transferred to The Chemical Foundation and included in those described in the Bill of Complaint in this case?

A. Yes, sir.

Q. 35. Will you please present it?

A. (Handing paper to counsel.)

MR. ANDERSON: We now offer in evidence statement consisting of two large sheets with a summary sheet on the face thereof, which has just been presented by the witness, purporting to show the earnings from royalties under licenses issued by the Federal Trade Commission under patents, trade-marks, etc., subsequently seized by the Alien Property Custodian and transferred to the defendant, as alleged in the Bill of Complaint in this case and ask that the same may be read in evidence as Plaintiff's Exhibit No. 198.

MR. KRESEL: In addition to the general objection, your Honor, that we have urged, we have several specific objections to this exhibit and to this testimony. First let me make plain to your Honor what this exhibit purports to show. It purports to show that according to the records of the Federal Trade Commission it was reported to that Commission that under licenses issued on patents subsequently transferred to The Chemical Foundation, certain royalties had accrued. I desire your Honor to bear in mind that I use the word "accrued." This exhibit does not purport to show that the license fee had been paid, because your Honor will recall that under Subdivision F of Section 10 of the Trading with the Enemy Act, while the Federal Trade Commission was given authority to issue the licenses, payments of royalties had to be made to the Alien Property Custodian and by him covered into the Treasury of the United States; and I understand this witness to be presenting this statement based upon the records of the Federal Trade Commission and not based upon the records of the Alien Property Custodian. So that it is clear that this

purports to be a statement of royalties accrued and not paid.

We object to that, first, upon the ground that if it is offered upon the question of value of the patents, it is admissible and immaterial for this reason:

Sub-division F of Section 10 of the Trading with the Enemy Act provides that after the war, the owner of the patent, whoever he may be, whether it be the alien if the patent had not been seized, or whether it be somebody to whom the patent may have in the meantime been transferred may come into a Court of Equity and ask the Court to do three things.

First, he may ask the Court either to increase or decrease the amount of royalties, and the Court is given the power to do so. In addition thereto, the licensee is given the express right to make any and all defenses which would be available were no license granted. In other words, the licensee, notwithstanding the fact that he holds a license, may challenge the title of the owner of the patent or the validity of the patent. The Court is given further the power to discontinue the license altogether or to rearrange the license fee or to extend the license until the end of the life of the patent. I have already said that the Court may increase or reduce the royalty from the beginning.

That being the state of the law, and this being a statement of royalties accrued under such licenses, it needs no argument to show that even if it could be shown that the Alien Property Custodian had knowledge of what the records of the Federal Trade Commission showed; even if it could be shown that the purchaser of the patent, The Chemical Foundation here, had knowledge of what the Federal Trade Commission records

showed, it can not be said that that was an element which to any purchaser of the patent would indicate what the value of the patent was that he was purchasing. And so I say that it is immaterial upon the question of value and that is the only purpose, I understand, that the evidence is being offered for. That is the first point.

Second, we urge upon your Honor this consideration. It was conceded by the Government, and if it is not, you will correct me, that not a penny of this money which according to the statement about to be offered had accrued as license fees, if paid over to the Alien Property Custodian, has ever been paid to this defendant. That is correct, isn't it?

THE WITNESS: That is absolutely correct.

MR. KRESEL: It is also a fact, your Honor, and will not be denied that the liecnses issued by the Federal Trade Commission, especially on what are known as vat dyes, were in many instances, as shown by that very exhibit which is now being offered, licenses covering several patents in the same license and the license had a clause therein providing that the licensee is given the right to use the processes covered by the patents whose numbers were specified in the license; not only those, but any other enemy-owned patent referring to the same subject.

Any return from a holder of such a license to the Federal Trade Commission showing that a certain amount of royalty had accrued, unless it undertook to specify how much thereof accrued under the specified patents, the numbers of which were given in the license, and how much on any other enemy-owned patents that he could use under the license—unless that evidence is presented, your Honor cannot say whether any of the royal-

ties so reported or subsequently paid were royalties under patents that were conveyed to The Chemical Foundation or were royalties on patents owned by other alien enemies with which we had nothing to do.

So there again, the evidence can not be used, certainly cannot be used by a Court which deals as far as it can with exact matters as a basis or as evidence of value of these patents.

It is also a fact, your Honor, that many of the patents that were conveyed to The Chemical Foundation had in fact expired at the time of the conveyance. This exhibit which is now being offered shows among other things alleged accrual of royalties on such expired patents. Certainly, your Honor can not use such evidence as evidence of the value of the patents that were conveyed to us. So for that reason, the evidence now offered is immaterial upon the question of value.

Moreover, the exhibit on its face shows that in many instances returns are listed there of several patents, the return being a single return covering several patents. Those patents expired at different periods. You will have, for instance, a return of $100 on four patents. One would expire one year. The other two or three will expire two or three years thereafter. Unless there is a segregation of how much of that return is to be apportioned to each of the four patents, as an example, your Honor has nothing upon which to base any conclusion as to the value of each of those four patents.

I have pointed out these matters and I realize that it is difficult for the Government to make this proof. As your Honor knows, Colonel Anderson and I have done our level best to come to an agree-

ment upon the subject, and as your Honor sees, I have waived all questions of formal proof. I am not raising any question that this is secondary evidence or that this witness did not make the personal examination, or anything of that sort.

The objections that I am making go to the substance of the matter, not to the form; and for the reasons that I have urged, we say that this evidence is inadmissible and immaterial.

One other point: The statement covers not only the period prior to April 19, 1919, but also the period subsequent thereto and to December 31st, 1922. We object to any evidence as to the accruals of royalties subsequent to April, 1919, because what was realized thereafter was not known to anybody on the 10th of April, 1919, and could not, of course have had any effect upon the determination of the value that was to be paid for the patents at that time.

Mr. Anderson: May it please the Court, I will make only a very brief statement for the record in reply to Mr. Kresel, because I assume, under your Honor's ruling this morning, you will let the evidence in, and for me to take my own responsibility as to its weight. Much of his argument is addressed to the weight and not to the admissibility of the evidence, he having waived the formal question of proof.

In the first place, Mr. Kresel is mistaken as to this showing only the earnings of these patent licenses. The statement shows also the payments. But since the witness has not made a specific examination of the books of the Alien Property Custodian who received these payments, but only the books of the Federal Trade Commission as to payments, I shall put on later evidence verifying the statement here as to payments; and if there

are any errors, they will be corrected. So that, while it will go in now, subject to verification in a method which Mr. Kresel and I have agreed to adopt, waiving the formalities, but subject to his objection as to substance, I will put that evidence on certainly the first day next week. That meets that question for the present. I recognize I must put in the additional evidence.

MR. KRESEL: That evidence, Colonel, will be not only the amount received by the Alien Property Custodian upon these licenses but the dates when received.

MR. ANDERSON: Yes.

MR. KRESEL: You recognize, of course, that the dates when received are important.

MR. ANDERSON: Yes. Mr. Storck and your representative will go to Washington and check the accounts together of the Alien Property Custodian and both of them will be prepared to verify this statement as to the evidence of payment and the date of payment. What its value is as evidence will be another question. That meets that.

In the second place, counsel has referred to the matter of royalties accrued. Our contention is and will be that we are not at this time undertaking to prove an accounting against the Alien Property Custodian for any payments. If the prayers of the bill should be granted by the Court, I assume then that the matter will be referred to an auditor of the Court to make the accounting. So that we are introducing this evidence now not with a view of establishing a definite and specific account against the defendant of amounts which it would be liable for upon the theory of the bill, but of establishing evidence of value of these patents themselves and copyrights.

The accrued royalties under licenses issued

are evidence of value and earning capacity of the patents. The actual payment of the royalties, assuming the persons to be solvent, would be necessary if we came to have an accounting for the proceeds.

In the third place, as to the contention that the defendant had no notice of these accruals in the hands of the Federal Trade Commission——

THE COURT: I do not think that point was made.

MR. ANDERSON: Yes.

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: There are two answers to that. One is that a person purchasing property must take notice of conditions of this character and is charged with knowledge of them. In the second place, the President of The Chemical Foundation was at the time of these transfers the Alien Property Custodian who collected this money and had these licenses reported to him. So I do not think that that would be a very serious question in this matter.

MR. KRESEL: I think, Colonel, you misunderstood me; and I do not want to be misunderstood by you or by the Court. The point that I was making, was that neither The Chemical Foundation nor Mr. Garvan as Alien Property Custodian can be charged with knowledge of what the records of the Federal Trade Commission showed.

Mr. Garvan, as the Alien Property Custodian, might, it is conceivable, be chargeable with knowledge of what the records of his office showed, even though he had no personal knowledge; and that knowledge may, if you can satisfy the Court, be imputed to The Chemical Foundation. But how can they be chargeable with notice of what the

Federal Trade Commission records showed? That was the point I was making.

MR. ANDERSON: As to this particular matter, it was done by both the Federal Trade Commission and the Alien Property Custodian, because the Federal Trade Commission issued the license, it was reported to the Alien Property Custodian, and the money was payable to the Alien Property Custodian.

MR. KRESEL: And that is the reason it is so important to show what the records of the Alien Property Custodian showed.

MR. ANDERSON: I am going to show that.

Then in addition to that, if Mr. Garvan did not know, he was charged with the obligation to sell these properties, in the position of Alien Property Custodian, and I respectfully suggest, without imputing any criticism to Mr. Garvan, that he should have known—and I have no doubt he did know.

In the second place, as to the more general objection and the chief objection, I take it, of counsel that we cannot show any earnings on these properties after the date of the assignment—and counsel is mistaken in speaking of the date as April 10th; there were different dates of assignment, but the principle is the same—I respectfully suggest that the earnings of these patents under licenses issued by the Federal Trade Commission after the period of assignment are a very material element here, since that was a then earning power which was continuing, and I think this record shows—if it does not, it will—that with one or two exceptions, all of these licenses were for the life of the patents; and therefore, not only did it tend to show the value of the patents—not conclusive evidence on that subject, but merely

evidence among others to be weighed—but it shows something that The Chemical Foundation was actually buying. That is a current income under those licenses and that is a part of the property it bought. It bought it subject to the license, but also bought it with the right of the license.

So that that would clearly be, it seems to me, not only valuable evidence from that standpoint, but the continuing earning capacity, if it got it, would be evidence of value provided it got the right to that value—and as stated on the record by Mr. Kresel, suits have been instituted by The Chemical Foundation to get those royalties.

The question of the right of the Court to review these royalties after the war—and the period for the review is now past—might be one of the arguments that might be considered in weighing this evidence. That is all. It would not affect its validity as evidence.

I do not care to extend the argument further but merely state this reply on the record so that when the Court comes to read it, it will read not only one side of the argument. As I understand the rule under which your Honor is proceeding, you will permit this evidence to be introduced for whatever it may be worth in the argument, which will be a subsequent question for consideration; and I will therefore not extend my remarks.

Mr. Kresel: Permit me, if your Honor please, because I want to make sure that I covered this ground, as I consider this important. There is one other consideration that I wanted to urge that I omitted and that is this.

We shall claim that unless the Government proves in connection with the income, so to speak, on these licenses, what it costs the Government to administer the licenses, the Court can not take into

consideration what was received without knowing what was expended in connection therewith.

To make myself clear, the Federal Trade Commission has charge of issuing these licenses. They no doubt had a separate department that had charge of this matter. The Government certainly paid the expenses of that department. The Alien Property Custodian collected these moneys, kept accounts showing what moneys were collected and the Government had to pay the expenses of the Alien Property Custodian who took charge of that end of it. Then the matter went to the Treasurer, where the moneys were paid in and found their final resting place. The Secretary of the Treasury Department certainly incurred some expenditure in taking care of that end of it.

If they were trying to show the return on these licenses to a private individual or a private corporation, the very first question that would arise would be, what did it have to expend in connection therewith? And so I say that the Government can not stop short by simply showing what was taken in. They have to show also what went out.

As to the suits over these very license fees which Colonel Anderson mentioned, which are now pending, as is the fact, I think it is proper to say that while the Chemical Foundation is party-plaintiff in some of these suits, the German owner claims these very moneys and the United States Government stands between them and likewise makes claim to them. I think the Court should know that when it comes to weigh the importance of this evidence as indicating what was the value of the patents.

THE COURT: Have you anything further to say, Colonel Anderson?

MR. ANDERSON: Only this, just a word. First as to the first point, I shall introduce evidence showing the cost to the Federal Trade Commission Office for running this thing, although I think that is really only a matter going to weight of the evidence; because suppose the Federal Trade Commission Office had been very expensive or very economical, or the Chemical Foundation had been very extravagant, those things would not be conclusive at all, and they are really matters for the defense to put in, and certainly the last point as to the condition of this litigation is a matter of evidence for the defense, and if counsel have not shown those matters on the record I presume they will show them at the proper time.

THE COURT: May I inquire, Colonel Anderson, whether you contend that you would be justified in introducing a statement of the arbitrary royalties on an uncertain number of patents, only a portion of which had been acquired by the defendant?

MR. ANDERSON: No, sir. That is a point I want to reply to. There is in the provision of the license which has not been introduced as a matter of convenience on this point—there is, I concede, a provision giving a right to use other patents in this same connection at the same royalty, I presume, if the licensee desires to do it. If we introduce a statement and evidence showing the patent covered by the license and the fact that it has produced so much revenue, though I have not given the matter serious consideration, I think that the burden would be upon the defendant to show that there was other income derived from other sources. The *prima facie* case would be made. I may state, if your Honor please, that your Honor may understand my position, that I am introduc-

ing this evidence because I take the position as a matter of fairness to the Court and the parties I should of course prove every paragraph in this bill. My idea is if I was trying a case under ordinary conditions that I would take that view, that upon the record in this case the burden is upon the defendants to show a fair sale, your Honor having gotten by the other questions of Trust, that the burden immediately shifted to the defendant. But I want to put in all the evidence I have got on this subject, and I am going to do it.

THE COURT: May I ask you one further question, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE COURT: Mr. Kresel made the suggestion or contended that this report fails to distinguish between those patents which expired prior to the first assignment and those patents which did not. You did not reply to that.

MR. ANDERSON: No, sir, because of this fact: The question which patents have expired is merely a matter of figuring from the record, because we know the life of a patent by Statute and we know the dates of issue. That appears in the record. We have not gone over it to analyze the expirations. Suppose there were four patents assigned to certain licensees, and suppose one or two or three of them expired at certain dates. The income, if affected by the expiration, would for the subsequent dates show the effect of that expiration on the income. Suppose all of those patents were seized and transferred to the Chemical Foundation, what does it matter which one has earned, so far as this suit is concerned? They did not stop to think about that when they sold 4500 in a lump, and why should we undertake to analyze

the revenue from any particular patent when the sale was as a whole and the attack upon the sale is as a whole? We are not here trying to get back any one patent. We are here trying to get them all back.

THE COURT: You mean there were some expired patents which were transferred?

MR ANDERSON: No, some have expired since they were transferred. That is perfectly obvious.

MR. KRESEL: You did not get the point that I made. Shall I re-state it?

THE COURT: I thought the point was as I shall state it and if I have not got it, Mr. Kresel, I will be very much obliged to you if you will re-state it. After the licenses were acquired by the assignment there were some patents which expired, and this statement does not show which or how many of those patents under which licenses were granted under the Federal Trade Commission had expired, and—

MR. ANDERSON: Yes, sir it does.

THE COURT: It does?

MR. ANDERSON: Yes, it shows the amount of revenue from every patent. Your Honor can take Exhibit G, which gives the date of issue of the patent and the date of assignment of the patent, and of course we will have to help your Honor. We do not expect you to do it, but you will find this statement gives the date of assignment and the patent number. Those correspond with Exhibit G. If that patent were issued more than seventeen years before the date of the transfer, then it obviously has expired. If it expired, it is not shown as earning anything after the date of expiration. It might be contended here, if the defendant is not entitled to recover the royalties accrued prior to

the date of transfer, which is a question of law and the construction of these assignments on which I take no position, upon the showing that that patent had expired before the transfer, the revenue therefrom included—

THE COURT: The revenue?

MR. ANDERSON: The revenue therefrom included in this statement, if any, would have to be deducted. That might be contended. Do I make it clear? Suppose we take Patent No. 100 and see that it was assigned, it was in the assignment and it was duly licensed here. Before the assignment was made that patent had actually expired, we will say, the date of issue and everything being shown. Suppose during the year 1918 before this assignment was made there accrued on that patent a thousand dollars. Upon showing that that patent had expired before this assignment was made, that thousand dollars would be taken out here.

THE COURT: It would be taken out of this sum?

MR. ANDERSON: It certainly would, out of the sum total.

THE COURT: Your contention is that it is to that extent incorrect, and therefore should not be admitted?

MR. KRESEL: Yes.

THE COURT: Mr. Kresel, it seems to me as I understand your contentions that if your first point were the only one made by you, I think that should be overruled on the ground, not that the statement would be of any material value or any substantial value, but it might indicate the extent of user. It being an arbitrary Statutory license, it would not give me values, it would be the extent of user. If I could find from other parts

of the record whether these patents were valid or had been challenged, then it might indicate generally, which is the only word I can think of, or be some indication of general value. But if the statement is uncertain and can not be made certain from other portions of the record as to the patents for which that royalty is received, or whether you acquired those patents under the assignment, then I take it that the statement the document is so uncertain as to be probably misleading unless that may be checked from other parts of the record.

Mr. Kresel: May I point to a concrete example of what I have been trying to make plain as to expired patents?

The Court: Yes.

Mr. Kresel: The point I make is that this statement from the records of the Federal Trade Commission in some instances shows a lump sum received on several patents some one or more of which had expired before we took any patents, because the Federal Trade Commission kept its records, as I understand, for six months' periods.

The Witness: It did.

Mr. Kresel: I have a concrete example here before me. Under date of June 28th, 1918, there is a return made according to this statement by the National Aniline and Chemical Company of royalties that had accrued on six patents.

I will not burden your Honor with reading the numbers of the patents, but the first of those numbers is of a patent that had expired before we took any patent at all.

Unless they can show that the entire amount of money that was so reported as having accrued on the six patents was not earned, and the one that had expired, have I not the right to claim that it

had? And if it had accrued on the one that had expired, then certainly it cannot be any evidence of the real value of the others.

Have I made myself clear?

THE COURT: Yes.

MR. KRESEL: That is the point I make and that is only one example.

MR. ANDERSON: If your Honor please, I think that the evidence would be admissible in any event. I am not going to argue. I think the evidence would be admissible. I think that the difficulties incident to the complicated proofs of this matter, involving as it does so many complicated angles and so many different officers, are very great. I recognize that. We propose after this evidence has been put in to fill up any gaps to the fullest extent we can from the records, but now we are merely discussing the admissibility of the evidence and even upon the statement of Mr. Kresel, I think there are several grounds perhaps upon the identification of patents of similar character that you could admit the evidence as a supplement to it perhaps in some of the details, which I propose to do. But the statement itself could go in, and then the additional evidence could be taken certainly as to payments and possibly as to the explanation of certain of those patents, which I am frank to say I thought we had agreed on. However, I do not want to take up further time in discussion, if the exhibit will go in.

THE COURT: I am going to let you put it in. I have very grave doubt, as it stands, as to whether it will furnish me any help in ascertaining value, because unless those things are pointed out; there was one instance pointed out by Mr. Kresel in his last statement, where that can not

furnish me any guide in determining values. It is introduced.

MR. ANDERSON: I quite understand that.

THE COURT: I do not know that it has value, unless you can point out to me from further evidence just what parts of it are reliable. There is a part of it which is unreliable. Now then, what parts of it are reliable. I think that the burden of that will be on you, Colonel Anderson.

MR. ANDERSON: I think if I am going to vouch for the statement, the burden is on me to make it as strong as I can make it from the proof available and make it valid evidence.

THE COURT: You misunderstood me. The burden will be on you now, even though that is admitted, to make clear to me in view of the deficiency of the document in one particular, wherein it is not deficient and wherein I may use it with a reasonable degree of certainty. It is admitted under our general rule of practice adopted in this case.

Received in evidence and marked "Plaintiff's Exhibit No. 198." (*See Exhibits, Vol. I, page 475.*)

MR. KRESEL: Are you making the summary as a separate exhibit, that small sheet?

MR. ANDERSON: It all goes in as one.

THE COURT: If you want to refer to it separately, you may mark one with the number and the other with the letter.

THE CLERK: The summary is 198-A.

Received in evidence and marked "Plaintiff's Exhibit No. 198-A." (*See Exhibits, Vol. I, page 477.*)

Q. 36. Mr. Storck, will you please take these exhibits 198 and 198-A, and state the amount of accrued royalties, first, up to the 31st of March, 1919, which

is a convenient date for division, and then from March 31st, 1919, up to the 31st of December, 1922, and then the aggregate of the two?

A. Prior to the date of assignment, which would be April 10th, there was $169,609.88, earned in royalties. Subsequent to assignment there were $321,964.50, making a total of $491,571.38 from December 31st, 1917, to December 30th, 1922.

Q. 37. Do you know, from your present examination of the records, whether any of those patents had expired prior to the assignment thereof to the Chemical Foundation, and if so, would you identify the patents which had expired prior to that time?

A. There had been some expirations on License No. 10, which was issued to Lembcke Von Bernuth & Company on January 17, 1918, License 709,799 expired.

MR. KRESEL: You do not mean "License"; you mean "patent"?

THE WITNESS: Patent, rather; pardon me; expired on December 23, 1919.

Q. 38. What date was it assigned to the Chemical Foundation?

A. On April 10th, nineteen—that went into that bunch of patents; I can not tell you the exact date. I should imagine April 10th, 1919.

Q. 39. 1919?

A. Yes, sir.

Q. 40. It was one of that April 10th, 1919, assignment?

A. Yes, sir.

MR. KRESEL: Then, he is not answering your question. Your question was what had expired prior to the assignment?

MR. ANDERSON: Yes.

Q. 41. That is prior to assignment to the Chemical Foundation, if you can find any.

A. None of these had.

Q. 42. None of the patents shown on that sheet, under which licenses were issued, had expired prior to the assignment to the Chemical Foundation?

A. Not prior to April 10th, 1919, no, sir.

Q. 43. Were there any of them that expired subsequent to April 10th, 1919, or prior to December 31st, 1922?

A. Yes, sir.

Q. 44. The last date given by you; and if so, state the numbers of those patents?

A. That is the one that I have previously referred to, Patent No. 709,799, expired on December 23, 1919.

Q. 45. Yes. How much revenue do you show as having accrued on that patent?

A. On that particular patent?

Q. 46. Yes.

A. $47,178.72.

Q. 47. $47,178.72?

A. Yes, sir.

Q. 48. How much of that accrued prior to March 31st, and how much subsequent to March 31st, 1919, if you can state?

A. There was $1,279.91 earned to December 31st, 1918, and there was $644.56 earned between December 31st, 1918, and June 30th, 1919.

Q. 49. Now, dividing that last amount in half and adding it to the earnings up to December 31st, 1918, what would be the aggregate earnings up to the 31st of March, approximately, on that patent?

MR. KRESEL: Now, what is the question, Mr. Stenographer? (Q. 49 repeated as recorded).

THE WITNESSS I will have to correct that. I could not follow this line on this statement across.

This is the correct one: Up to December 31st, 1918, the royalties amounted to $10,598.59, and

up to December 31st, 1919, they amounted to $10,133.71. Dividing that last figure $10,133.71 in half, it would be $5,056.85. That, added to the first figure, would be $15,655.44.

Q. 50. As the earnings up to March 31st?

A. No, that would be the earnings to June 30th.

Q. 51. What year?

A. 1919.

Q. 52. 1919?

A. Yes, sir.

Q. 53. Is that a part of the patents assigned on April 10th?

A. Well, it is in that period. You know there were several assignments.

Q. 54. Yes. That is up to June 1st?

A. Yes.

Q. 55 You can not figure the exact amount to April 10th, can you?

A. I can not.

Q. 56 Do you know of any other patents under which licenses were issued that expired within the period covered by these accounts?

A. No; that is the only one that I see.

Q. 57. Now, Mr. Storck, have you also examined the books of the Chemical Foundation, Incorporated?

A. Yes, sir, I have as to royalties.

Q. 58. Can you state what has been the royalty earnings on the Chemical Foundation, Incorporated, under the patents, trademarks, and so forth, assigned by the Alien Property Custodian, from the time of the assignment down to—

A. December 31st, 1922?

Q. 59. December 31st, 1922?

Mr. Kresel: I raise the objection, your Honor, that that is immaterial and irrelevant.

A. From the date of the inception by the Com-

pany of the receipt of royalties down to December 31st, 1922, the amount of royalties was $677,511.38.

Q. 60. Now, are there any deductions to come off that?

A. Yes, sir.

Q. 61. Have you made a consolidated statement now, showing the total amount of accrued revenues on these patents, including the amounts accrued to the Alien Property Custodian on contracts, the amount as to which you have testified, the amounts accrued under the Federal Trade Commission licenses accrued to the Chemical Foundation?

A. I have.

Q. 62. Will you present such a statement?

MR. KRESEL: Now, one minute, please. We object to that, if your Honor please, because we do not desire your Honor to get a misleading impression as to these large figures.

Our point is that insofar as an examination made of our books is concerned, those are open books, and we have no objection to this witness testifying as to what they show, because we are bound by them, and they show receipts of money. But we do object to being bound here by any statements on the records of the Federal Trade Commission as to what they think had accrued prior to the conveyance of these patents to us; and we do object to any statement of what the Alien Property Custodan's books may show prior to that date upon the ground that they are not binding upon us. We have not received the money; they deny that it belongs to us. There is no evidence here that we had any knowledge of what moneys had accrued, and there is no evidence that the money had in fact been paid to the Alien Property Custodian. To take and simply for the purpose of giving a large figure

to include what our books show we had actually received, and speculate as to whether the Alien Property Custodian did in fact receive what the Federal Trade Commission said they ought to have received, is simply speculative. It is not evidence in a Court of law.

THE COURT: What was the question? (Q. 61 and Q. 62 repeated as recorded).

THE COURT: Do you want to be heard on it, Colonel Anderson?

MR. ANDERSON: I merely want to say this, sir: that counsel, if they can attack the correctness of these statements, are quite at liberty to do so; but I do not understand that they make any objection as to the form of proof?

MR. KRESEL: No, I do not.

THE COURT: But it does, and you will put it on record if you want to.

MR. ANDERSON: Yes, sir.

THE COURT: Why is not Mr. Kresel's argument on that sound? I shall be glad to hear you on that, because I have a very strong impression that it is sound, and that is, that the Federal Trade Commission's records, unless you bring it home to the Alien Property Custodian, Mr. Garvan, or some of those people who subsequently became connected with the defendant here, why would those arbitrary statutory accruals bind this defendant? It may be quite patent but I missed that.

MR. ANDERSON: In the first place, it is part of what they bought. That is, the right to the accruals on those patents so far as they are now running. He bought that. Certainly after the date of the assignment. In the second place, suppose Mr. Garvan and the Chemical Foundation had not in an infringement suit, your Honor. We are en-

gaged in ascertaining value. The most common way of ascertaining value in condemnation proceedings, is to show the value of other similar property in a community; but certainly, if you can show the earning value of the property for several years before it was taken over for a number of years before it was taken over in the condemnation of real estate, the current and first evidence is what it had been earning; and second, the opinion of competent witnesses as to what it is worth for any use it can be put to.

Now, we are here in a position practically of ascertaining value on that principle, because fair value is the value of the property. If we were here to ascertain an infringement, that would be the question of right of infringement as to other property; but suppose we can prove that this property had a value; if we can prove that this thing had a value, it is the business of the Alien Property Custodian to find that out by proper proceedings and sale.

THE COURT: You pass from conspiracy now to whether or not a fair value was obtained for it.

MR. ANDERSON: I am discussing that particular aspect of the case. Now, in another aspect of the case, in the conspiracy aspect of the case, these gentlemen could not deal with this public property. There had accrued and were accruing large revenues; especially as they all occupied official positions with respect to the Government, and then when they are charged with an accounting, they come in and say, "We do not know anything about that." They are chargeable in law with all facts that were reasonably ascertainable as to the value of this property and its earning capacity at the time they took it over, and if they deliberately close their eyes to that fact and come in here and claim that they did not know it, that it-

self would be strong evidence of neglect of duty and probably even an ultimate purpose which I am not discussing in this case at the present time; so that in both aspects and in others which I do not think I need to discuss, this evidence would be clearly admissible. And I go further and say that the best evidence perhaps of the value of these patents, the primary and first evidence is their earning capacity throughout a period of years.

We can not arrive at it in dollars and cents, in actual figures. You can not any more in this case than you can in real estate; but that is very strong evidence of the value, in connection with general experience, in increasing or decreasing values over various periods. The evidence would be that its net earning capacity in any event, and I take it that the Supreme Court of the United States has said it in a number of cases with regard to patents, that the net earning capacity or advantage that the purchaser would gain by virtue of the ownership of the patent over what rights or advantage he would have if he did not own the patent, is one of the best evidences of value of the patent as a whole, and also evidence in infringement.

Now, he does not have to bring that to his notice. If he does not find that out, and he is charged with having made a sale contrary to law, he must take notice of it, because those are principles of law that he can not neglect.

All that, of course, is going into a very large discussion, which we will argue at the proper time.

THE COURT: Yes; you may put it of record.

MR. ANDERSON: I offer in evidence statement entitled "Chemical Foundation, Incorporated, adjustment of earnings as shown by Plaintiff's state-

ment from properties assigned to the Chemical Foundation"; and I ask that the same be read in evidence as Plaintiff's Exhibit No. 199.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 199." (*See Exhibits, Vol. I, page 479.*)

THE COURT: We will adjourn now and resume at 8.30 o'clock Standard time, tomorrow morning.

(Whereupon, at 3:30 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 15th, 1923, at 8:30 o'clock A. M., Standard time).

TENTH DAY.

Wilmington, Delaware,
June 15th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BY THE COURT.

GEORGE W. STORCK, resumed.

DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

Q. 63. Mr. Storck, last evening before adjournment I put into evidence Plaintiff's Exhibit No. 199, being the statement from earnings of royalties on the patents, trade-marks, etc, here involved as therein set forth, I would be glad if you would take that statement

and give me the amounts of such earnings from the various sources; that is, the Alien Property contracts, licenses of Federal Trade Commission and earnings of The Chemical Foundation, Incorporated, and the aggregate?

A. The total earnings were $491,571.38 for the Federal Trade Commission; for the Alien Property Custodian the total earnings were $152,801.77, against which we must deduct $30,000, resulting in $122,801.77; The Chemical Foundation $677,511.38, against which me must deduct $2,166.28, or $675,345.10, or a grand total of $1,289,718.25.

MR. KRESEL: A grand total of what?

THE WITNESS: Earned royalties.

Q. 64. The grand total being from those sources?

A. Yes, sir.

Q. 65. Have you made up a statement showing these earnings by periods?

A. Yes, sir.

Q. 66. Will you present it?

A. (Hands counsel.)

THE COURT: Have you another one of those sheets, Colonel Anderson?

MR. ANDERSON: I think we have, yes, sir.

MR. KRESEL: I think, sir, this is a copy. (Handing Court.)

THE WITNFSS: That is a copy.

MR. ANDERSON: I now offer in evidence the statement entitled "In re Chemical Foundation, Consolidated Statement showing Royalties earned or paid to Federal Trade Commission, Alien Property Custodian, and Chemical Foundation, compiled from records prepared by the Federal Trade Commission, Alien Property Custodian, and reports of Auditors for The Chemical Foundation, from December 31, 1917, to December 31, 1922," showing such amounts by periods of six months,

with a summary at the bottom thereof, which I ask to be read in evidence as Plaintiff's Exhibit No. 200.

THE COURT: This is subject to the same objection as usual.

MR. KRESEL: Subject to the same objection.

Colonel Anderson, I think you had better point out—

MR. ANDERSON: I am going to have him point out the changes.

MR. KRESEL: This last exhibit does not agree with the other exhibit.

MR. ANDERSON: I am going to have him compare the two and show the differences.

MR. KRESEL: They are entirely different.

THE COURT: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 200." (*See Exhibits, Vol. I, page 481.*)

Q. 67. Now, Mr. Storck, I would thank you if you would take Plaintiff's Exhibit No. 200 and Plaintiff's Exhibit 199. I note that there are some differences in the total. Explain the differences and the reasons therefor.

A. Yes, sir. In Exhibit 200, the totals are shown, that is, for the Federal Trade Commission, the Alien Property Custodian and The Chemical Foundation as being $1,327,335.24, while in Plaintiff's Exhibit No. 199 the totals are shown as $1,289,718.25. The differences are made up as follows:

On The Chemical Foundation we are to deduct $2,166.28, being moneys received by the Foundation on Linz & Mansfield patents not assigned to the Foundation by the Alien Property Custodian. That would bring the total, as I testified before, to $675,345.10.

On the Federal Trade Commission, we are to sepa-

rate, that is, royalties earned to June 30, 1919. From December, 1917 to December 31, 1918, $98,740.57. From December 31, 1918, to June 30th, an amount of $64,-382.13, from which we are to deduct 50 per cent or $32,191.06. The next item is adjustment——

Q. 68. Before you take up the next item, why did you make that division of the 50 per cent?

A. Because the total amount was $64,382.13 and we have agreed to make that on a 50 per cent basis, half.

Q. 69. Half represents what?

A. Prior to April 10, 1919 and the balance after April 10th, subsequent.

Q. 70. In other words, in order to arrive at the approximate date of April 10th, you have made a division based upon fifty-fifty between the period before April 10th and after April 10th?

A. Yes, sir.

Q. 71. But the sum total for the whole period remains the same, does it?

A. Yes, sir.

The next item is adjustment of income on duPont license No. 19, the amount being $61,884.98; the amount applicable to prior period being fifteen twenty-fourths thereof or $38,675.25. That would give us prior to the date of assignment $169,606.86, and subsequent to assignment $321,964.50 or total earnings of $491,-571.38, as testified to.

Q. 72. In order to get that clear, when you said "prior to asignment" and "prior period," you mean prior to April 10, 1919 and subsequent to April 10, 1919?

A. Yes, sir.

The next item that we have is, the Alien Property Custodian earned prior to assignment $152,801.77. We are to deduct $30,000, the item of $30,000 being payment against principal on the sale of a contract.

MR. ANDERSON: I would state, your Honor, that I have asked for the contract and counsel are getting it for me. I will introduce that contract which will explain more fully the meaning of this evidence.

A. (Continued) The amount shown as earnings from the Alien Property Custodian was $152,801.77. Therefore, by deduction of $30,000, gives $122,801.77.

Q. 73. As shown in Exhibit 199?

A. Yes, sir, shown in Exhibit 199.

Q. 74. With those exceptions—

A. I have one more, sir.

Q. 75. I beg your pardon.

A. The Chemical Foundation, as shown by the Accountant's report, and which I have verified, showed earnings of $677,511.38. We are to deduct the Lindsay-Mansfield patent of $2,166.28, leaving $675,345.10.

Those are the differences between Exhibit 199 and Exhibit 200.

Q. 76. And the methods which you have described are the methods by which those adjustments are arrived at as shown in those differences?

A. Yes, sir.

Q. 77. You spoke of the Accountant's work. Did you refer to the report of Messrs. Pasley & Conroy, accountants of The Chemical Foundation?

A. Yes, sir, Pasley & Conroy, Certified Public Accountants of New York.

Q. 78. You referred to the report of Messrs. Pasley & Conroy, expert accountants, on the books of The Chemical Foundation. Is that report dated February 3, 1923, which I now show you? (Handing to witness.)

A. Yes, sir.

Q. 79. Was that report presented to you by The Chemical Foundation for your checking?

A. It was.

Q. 80. I refer you to Exhibit B, Schedule 1, of

that report, entitled "Royalties and license fees summary of detail sheets numbered 1 to 19;" does that give the figures or the several accounts upon which you based your statement a while since that you had taken the figures of The Chemical Foundation from their accounts?

A. Yes, sir, it does.

Q. 81. I notice an item of "Miscellaneous Income" in that statement of $2,456.67; will you check that and find out what that is—that is not royalties, is it?

A. I believe it is, miscellaneous income from royalties. I can tell you though (looking at document). No, it is not, the amount being $2,456.67.

Q. 82. Was that considered by you in making up your statement of royalties?

A. It was.

Q. 83. That should be deducted?

A. That should be deducted.

Q. 84. With that deduction and the explanations which you have made, does this Exhibit B in the report of Pasley & Conroy agree with your figures?

A. Yes, sir.

MR. ANDERSON: I offer in evidence Exhibit B, the report of Messrs. Pasley & Conroy, dated February 3, 1923, and noted as Schedule 1, and entitled "Royalties and license fees summary of detail sheets number 1 to 19," to be read as Plaintiff's Exhibit No. 201.

MR. KRESEL: If your Honor please, if Colonel Anderson is willing to put in the whole report, I shall raise no objection to it. I do object, however, to putting in one page out of an accountants' report, especially so in view of the fact that the witness has stated that his computation, in so far as it refers to The Chemical Foundation matter, is based upon this very report.

THE WITNESS: And the checking of the accounts.

MR. KRESEL: Which the witness says he has since checked. Under those circumstances, it seems to me that the whole report should be before the Court. Otherwise the Court can not properly judge of the figures.

THE COURT: I shall let Colonel Anderson put in such portion of it as he pleases and I shall give you the right now, if there is no objection on the part of Colonel Anderson, to put in the remainder. If not, I shall give you the right to put it in either on the opening of your case or at any time during the progress of your case.

MR. ANDERSON: I shall be very glad to have counsel put in the entire report at this time, and have it identified properly, so that it be taken together, except that I have not personally had a chance to go over all this report, and I do not want to introduce it as the plaintiff's evidence, but I am perfectly willing to have it go in with the understanding that this page we introduce, and the remainder of the report is introduced by counsel for defendant.

MR. KRESEL: I shall not at this time interrupt the Colonel's presentation of the case, to put in an exhibit of mine. I understand your Honor to say that I may put it in upon our case.

I have a further suggestion to make, and that is, that the Colonel should at least put in the schedules referred to in that summary, of which it is a summary. You see, Colonel, each one of those items refers to a schedule, sheets 1 to 3, sheet 4. It seems to me that at least you ought to put in the underlying schedules.

MR. ANDERSON: One minute. Are you going to put this report in evidence?

MR. KRESEL: I shall probably do so, but I say I do not want to do it now and interrupt your case, stick in one of my exhibits among a mass of your own. If you are satisfied with that one sheet, all right.

THE COURT: I understand, of course, Mr. Kresel, that my suggestion to you that you put in the remainder does not meet technically the objection made by you.

MR. KRESEL: Yes.

THE COURT: But I overrule the objection; and in compliance with the rule and in conformity with the rule with respect to admitting evidence that we have adopted for this case.

MR. KRESEL: Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 201." (*See Exhibits, Vol. 1, page 483.*)

MR. ANDERSON: In view of Mr. Kresel's statement, I will offer this sheet, and if Mr. Kresel should later put in the entire report as to which he exercises his entire discretion, I shall ask that this be not duplicated in the record and just be put in as a part of the whole, that is, the schedule.

THE COURT: Admitted.

Q. 85. Mr. Storck, you have just presented to me certain cards showing details of royalties earned under licenses issued by the Federal Trade Commission, with certain memoranda attached giving further details of the matter contained on those cards. These cards are O. K'd in purple ink by "W. R. W." Are those cards taken from the records of the Federal Trade Commission?

A. They were, yes, sir.

Q. 86. Have you checked them yourself?

A. I have as to amounts.

Q. 87. Are they correct in accordance with the records of the Federal Trade Commission?

A. They are.

Q. 88. Do the cards so presented give the details of the figures presented on your large Exhibit No. 198 of yesterday?

A. Yes, sir; that is the source from which I complied those exhibits—those cards.

MR. KRESEL: Will you let somebody else count them so that we do not spend time on that, Colonel?

MR. ANDERSON: Yes.

MR. KRESEL: Have you offered those, Colonel?

MR. ANDERSON: No, I will now offer in evidence 58 cards, with attached typewritten memoranda of detail sheets which have been identified by the witness, from the records of the Federal Trade Commission, and ask that the entire lot be introduced as Exhibit 202, A. to 202—whatever the letter is. Your Honor, I have a long distance call. Mr. Kresel, you may go ahead and Mr. Galloway will take my place while I am gone.

MR. KRESEL: Mr. Galloway, are you all attention?

MR. GALLOWAY: Just a moment.

MR. KRESEL: I do not want to take you by surprise.

MR. GALLOWAY: There are 58 items in the last offer.

MR. KRESEL: Before your Honor rules upon the admissibility of these cards, I ask the privilege of asking the witness a few preliminary questions.

THE COURT: You may proceed.

By MR. KRESEL:

Q. 89. Mr. Storck, these cards that you have presented are not the original cards, are they?

A. They are not.

Q. 90. You have stated that they are certified. Will you indicate to me the certification of these cards?

A. They are O. K.'d, sir. The last initial is Wilson, I think.

Q. 91. No, no. Just read from this card that I present to you what you call the certification?

A. In purple ink it is written here: The amount, "O. K."—M. R. W."

Q. 92. On that particular card the certification consists of the following: "$87,975.39 O. K. M. R. W."

A. That is correct.

Q. 93. Have you ever personally seen the original card?

A. Yes.

Q. 94. Is this card that I now show you an exact copy of the original?

A. No, sir.

Q. 95. As to the typewritten memorandum that is attached to this card, do you know when this memorandum was made?

A. I do not.

Q. 96. Do you know who made it?

A. Only by hearsay.

Q. 97. Do you know whether that is a memorandum compiled from the records of the Federal Trade Commission?

A. I do not believe it is myself.

MR. KRESEL: We object, if your Honor please, to the introduction of these cards upon the ground that they are not properly certified, even admitting as I am not admitting now that certified copies may be introduced in evidence; furthermore, that it now appears from the statement of the witness that they are not copies of the originals, but are copies of portions of the originals and specifically we object to the typewritten memoranda that are

attached to each of these cards upon the ground that we have no information as to the source thereof or what they purport to be,

MR. GALLOWAY: If your Honor please, we do not contend that these are the original records, but quite frankly we did not understand that any question of formality as to the authenticity was to be raised and we therefore ask at this time to withdraw the offer of these cards because we agree quite readily that they are not the original cards here.

I would offer at this time a document which Mr. Kresel requested yesterday should go in as preceding a document which I then was offering and which I stated I would offer at a later time.

MR. KRESEL: I did not request. I merely suggested.

MR. GALLOWAY: You suggested and I am quite happy to comply with the suggestion.

THE COURT: Meaning thereby, Mr. Kresel, that this document is open to the same objection as the other?

MR. KRESEL: Yes, your Honor. I simply called attention to the fact that there was a preceding document.

THE COURT: And that the other document is not complete without this one.

MR. KRESEL: Certainly.

MR. GALLOWAY: Plaintiff offers in evidence letter dated December 27, 1918 from Frederick Seymour to the Washington Sales Committee of the Alien Property Custodian with reference to Badische Tanning patents and asks that the same may be read in evidence as Plaintiff's Exhibit No. 170 and one half.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 170½." (*See Exhibits, Vol. I, page 435.*)

By Mr. Anderson:

Q. 98. Mr. Storck, will you obtain from the Federal Trade Commission the original cards together with the memoranda attached?

A. No, sir, I have not the originals. These are duplicates.

Q. 99. Will you obtain them and bring them to the Court by next week?

A. Yes, sir.

Q. 100. Have you in your possession photostats of the records of the Sales Manager of the Alien Property Custodian showing the dates of the several payments and the entries upon the books of the Sales Manager representing the amounts paid by The Chemical Foundation for the patents, trade-marks, etc., involved in this suit?

A. Yes, sir.

Q. 101. I hand you six photostats of sheets entitled "Alien Property Custodian, Washington Bureau of Sales, General Ledger" and will ask you if those are photostats of the original ledger records on that subject?

A. They are.

Q. 102. Have you examined the originals yourself and can you identify them?

A. Yes, sir.

Q. 103. They constitute the complete ledger record on that subject of the payments made by The Chemical Foundation to the Alien Property Custodian for these patents, etc.?

A. Yes, sir, up to that date, the final date.

Q. 104. Up to the date shown here—June 10, 1920?

A. Yes, sir.

Q. 105. They cover the transactions from March 19, 1919, to June 10, 1920, and are complete within those dates?

A. Yes, sir.

MR. KRESEL: Colonel Anderson, according to our records this is not complete.

MR. ANDERSON: I say for those dates. You are at perfect liberty to put in additional dates.

MR. KRESEL: If your Honor please, in so far as this exhibit now being offered shows the amount of money that was paid the defendant for a portion of these patents, this exhibit does not purport to show all of the payments. We have no objections, but we do object to the comment which appears in the entry of the receipt of the money. Those we say are, if anything, self-serving declarations that we are not bound by.

MR. ANDERSON: If your Honor please, I think the record of the Alien Property Custodian at the time of these receipts must always be some evidence of what the entry on the book is as to the receipt, and if there is anything wrong in this entry it is quite competent for counsel to show it was contrary to the fact. But whatever record they made at that time is a record which is relevant in this case. As to its not being complete, I have already asked as to the dates and between what dates it is complete. I am informed by counsel that there were some subsequent payments, but they do not know whether they were made through the Sales Manager or not. This is a transcript of the record of the Sales Manager of the receipt of these moneys. That is all I am going to put in. If there were any other payments, I shall not object to counsel putting them in, showing through what sources they went. I will put

them in myself if they want it done to show the total.

THE COURT: May I see the paper, please?

MR. ANDERSON: Yes.

MR. KRESEL: I desire to be heard further on the matter before your Honor rules.

MR. ANDERSON: I was going to say in addition that the record shows Mr. Garvan was both President of this company and the Alien Property Custodian when these records were made up. The Bill in this case avers that the total sum paid under all these assignments, including those made by Mr. Garvan and two made by Colonel Miller, was $271,000.

MR. KRESEL: $271,850.

MR. ANDERSON: $271,850. The answer admits that, so there is no controversy as to the amount paid, but I want to produce this record on the question of dates of payments and times of payments, and I think in the circumstances which I have indicated, the entire record is proper evidence.

MR. KRESEL: You see, your Honor, Colonel Anderson's own statement indicates the vice of putting this in. There is no dispute as to the amount paid, so he does not have to put that in to show that. There can be no dispute as to the dates when paid, and if there is we will concede the dates; but what he is trying to do is bind us by certain statements made in that record; as to the purpose of the payment or the source whence it came, I say that is not binding on us.

I am perfectly willing to agree with the Colonel as to the dates when these payments were made. As to the amount, there is no dispute.

Now, what other purpose can there be of putting this in except to bind us by the entry itself? I say we cannot be bound by it.

MR. ANDERSON: I am very much obliged to counsel, but I think I have a right to put in the records of the Sales Manager, showing when the Alien Property Custodian received this money, and the entries on the books of the Sales Manager as to the receipt of this money, because that is the essential of this whole transaction.

Now, your Honor, if there are any mistakes in those entries, in the expressions used or the facts presented by those books, it is quite competent for counsel to introduce evidence to show those transactions; but I have the right to show the contemporaneous records, and put those records in, to show what took place. When I say the right, I mean the right to offer the direct evidence; and especially that is true under the peculiar facts of this case, where it is the Alien Property Custodian's records I present, and he was also the President of the defendant.

MR. KRESEL: Counsel, I contend, your Honor, can not put upon us the burden of this proving an unauthorized statement placed upon the books. I do not care whether they are the books of the Alien Property Custodian or of anybody else. We can not be bound thereby.

THE COURT: I do not understand the theory upon which you can be bound thereby. The documents can not be received in evidence as indicative of the amounts paid, because that fact is not in issue, the allegation in the Bill having been admitted by the answer, so it is no longer before the Court.

The documents of the plaintiff are not evidence under any statute of the United States. They are not evidence under any statute of the State of Delaware, so that I do not understand the theory upon which they can be admitted save for our

broad rule I would reject them. You may put them on the record.

MR. ANDERSON: I want to note, in view of your Honor's statement, on the record—I will not reply. There is no use of enlarging the record.

Received in evidence and marked "Plaintiff's Exhibit No. 202." (*See Exhibits, Vol. I, page 484.*)

MR. ANDERSON: Reserving the right to recall the witness as indicated yesterday, for the purpose of proving the list of contracts which was to be prepared, giving his testimony after checking the records of the Alien Property Custodian as indicated yesterday, and one or two other matters that were passed by, I will now terminate the direct examination, and will state to counsel that he can either examine now or when the witness is recalled, as he may prefer, with my consent.

MR. KRESEL: I should like, if your Honor please, to ask this witness at this time a few questions. Of course, when he returns, I shall have some other questions.

MR. ANDERSON: That is perfectly satisfactory. You may go ahead with your cross-examination now and then continue it later.

CROSS EXAMINATION.

By MR. KRESEL:.

XQ. 106. Now, Mr. Storck, I wish you would take, if you have not now before you, the duplicate of that statement—I do not remember the exhibit number.

A. 199.

XQ. 107. You have that?

A. Yes, sir, 199.

XQ. 108. I want to make perfectly clear, if I can,

with you, that except for the sum of $675,345.10, which you say according to the books of The Chemical Foundation is the amount received by it as a return upon the patents assigned to it by the Alien Property Custodian, The Chemical Foundation received no other money which you have listed on this exhibit?

A. No, sir.

XQ. 109. That is right, is it not?

A. That is correct.

XQ. 110. So that, of the grand total which you have compiled here, of $1,289,718.25, the only sum received by The Chemical Foundation was this $675,345.10?

A. That is absolutely correct.

XQ. 111. And now, if you will turn please to the statement that refers to the contracts—it is 194—may we have it please? (Handed to counsel.) On that Exhibit 194, you show that according to the books of the Alien Property Custodian, there had been received by that official $152,801.77, as a return upon certain contracts that were subsequently assigned to The Chemical Foundation?

A. That is correct.

XQ. 112. From that sum you have deducted $30,000, leaving a net return on those contracts collected by the Alien Property Custodian, $132,801.70?

A. $122,801.77.

XQ. 113,—114. 122,801.77?

A. Yes, sir.

XQ. 115. This exhibit does not show when these payments were received, does it?

A. It does not.

XQ. 116. No part of that money was received by The Chemical Foundation, was it?

A. Absolutely not.

XQ. 117. And your examination of the books of The Chemical Foundation has disclosed that since the assignment of these contracts by the Alien Property

Custodian to The Chemical Foundation, that corporation has received on these contracts only the sum of $2,442.06?

A. That is right.

XQ. 118. When each of these contracts is to expire, we do not know yet; that is to be put in later?

A. That is true.

XQ. 119. Please take your long exhibit. Have you a copy of it?

A. I have not a copy, but I remember the amounts.

XQ. 120. And this summary with it. This exhibit that we call the long one, is number what?

A. 198-A.

XQ. 121. 198 and 198-A; the Summary is 198-A.

A. That is right.

XQ. 122. Those purport to show what was reported to the Federal Trade Commission as having accrued in the form of royalties under licenses issued to the Federal Trade Commission covering patents that were subsequently assigned by the Alien Property Custodian to The Chemical Foundation?

A. That is correct.

XQ. 123. And those licenses were issued by the Federal Trade Commission before the patents were assigned by the Alien Property Custodian to The Chemical Foundation?

A. That is correct.

XQ. 124. Whether any payments were actually made, you do not know?

A. I do not.

XQ. 125. When the payments were actually made, if made, you do not know?

A. No, sir.

XQ. 126. Your exhibit does not show?

A. No, sir.

XQ. 127. Of course, payments of royalties under

licenses issued by the Federal Trade Commission are not made to the Federal Trade Commission, are they?

A. No, they are not.

XQ. 128. So, if you turn to your Exhibit No. 198, this long exhibit, the columns headed "Paid," "Unpaid," and "Over Paid" must be disregarded?

A. No, their cards show that there were payments made, but I can not tell you as to dates.

MR. KRESEL: May I have the cards, please?

MR. ANDERSON: They did not go in.

XQ. 129. Do you mean the Federal Trade cards?

A. Yes.

MR. KRESEL: I want to show them to him.

XQ. 130. I want you to show me anything on any of these cards showing that anything was paid?

MR. ANDERSON: If your Honor please, I do not think counsel can examine the witness as to those cards if they are not in evidence. I think I stated that I am going to produce the originals on account of his objection to the copies, but I do not think he can examine him on matters not in evidence.

THE COURT: I will sustain your objection, if you press it, with the inevitable consequences of it.

MR. ANDERSON: The inevitable consequences are, of course, that unless we can produce the originals, those payment columns would mean nothing.

MR. KRESEL: That is all I want to get from the witness. It that is conceded, I will stop right here.

MR. ANDERSON: We have yesterday agreed to produce the original Alien Property Custodian records showing the dates of these payments and this morning stated, in view of his objection, that we will produce the original cards and original records.

MR. KRESEL: All I want to have the record show, your Honor, is that we are not bound by that part of this exhibit which is now in evidence, which purports to show when the payments were made.

MR. ANDERSON: I made the statement yesterday clearly that I would produce this additional evidence and if they are not supported, I will state to the Court that these columns will not be relied upon.

THE COURT: Do you withdraw the question, Mr. Kresel, then?

MR. KRESEL: I withdraw the question.

XQ. 131. On this Exhibit No. 198, I notice that many of the licenses cover more than one patent?

A. Yes, groups of patents.

XQ. 132. You do not show on this exhibit the date of the expiration of each of those patents, do you?

A. No, sir.

XQ. 133. You do not show on this exhibit which of the patents covered by these licenses had in fact expired prior to the assignment of any patent to The Chemical Foundation?

A. I believe in only one instance.

XQ. 134. In only one instance you do show it?

A. But I do not recall the date. It gives the date of expiration, yes.

XQ. 135. You apparently did not get my question. I am asking you whether this Exhibit 198 shows any of the patents covered by any of the licenses had in fact expired before the assignment of the patents to The Chemical Foundation?

A. No, it does not.

XQ. 136. Did you make any examination to determine whether in fact any of the patents upon which any license was issued, as shown by you in this ex-

hibit, had in fact expired before any assignment to The Chemical Foundation?

A. No, sir.

XQ. 137. Of course you see, do you not, Mr. Storck, that if it be the fact that some particular license covers a patent that had in fact expired before any assignment was made to The Chemical Foundation, the return on such patent can not be the basis of trying to find out what the value of the patent was?

Mr. Anderson: One moment. If your Honor please, I think the Court's function is to determine those questions, sir, and not the witness. That is a pure argument and I most respectfully suggest those are questions I want to argue to the Court and not to the witness, on the whole record, including the terms of the assignments themselves, and the witness is not capable of speaking on this record.

Mr. Kresel: This witness is called as an expert, your Honor, and I am asking him as an accountant whether it is not true that if a return is made on a number of patents, a lump return, and it appears in fact that one or more of the patents covered by the particular license had expired, that the lump return can not be made the basis of a valuation.

Mr. Anderson: That is a question of law and fact, and I do not agree with counsel on the law at all.

Mr. Kresel: I did not expect you to agree with me.

Mr. Anderson: I mean it does not qualify him as an expert on law, and that is a legal question.

Mr. Kresel: I am asking him not as a question of law, I am asking him as a question of accountancy.

MR. ANDERSON: The witness as an accountant can speak as to figures and methods of keeping accounts, and matters of that kind; but when it involves a legal question, then he must state the facts, and, I respectfully suggest, give us a right to argue that question before the Court, and not undertake to preclude that question by a conclusive answer on the subject. I must object most earnestly to that examination.

MR. KRESEL: Of course, we are not getting anywhere by the Colonel calling it a question of law and I calling it a question of accountancy. We have got to submit the question to your Honor.

THE COURT: Is your question merely one of inducement or an ultimate question of fact, taken from your standpoint?

MR. KRESEL: Certainly not an ultimate question of fact. In other words, I am not seeking to have this witness give your Honor expert testimony as to value; I understand perfectly he has not been called for that purpose. I am asking him as a certified public accountant whether the fact that one license covered a number of patents and that one of those patents had in fact expired before there was any conveyance to us, does not make it impossible to use the figure as a basis.

THE COURT: I think the question you present is one for me to answer and I can answer it that the conclusion which you indicate is inevitable; but that is for me to determine and not for the witness, as I say. So the objection is sustained.

XQ. 138. Mr. Storck, you know that the Federal Trade Commission license contains a clause permitting the licensee to use not only the patents specifically covered by the license but all other enemy-owned patents in the same class?

A. I do not know it.

XQ. 139. You do not know it?

A. No, sir.

XQ. 140. I assumed that you tried to present a fair statement here to the Court?

A. I certainly did.

XQ. 141. I am not assuming that you tried to do anything else. Did you not seek to find out whether the reports made to the Federal Trade Commission as to royalties accrued under licenses were such as covered patents that were conveyed to the Chemical Foundation?

A. Yes.

XQ. 142. That was the only thing that you wanted to show here, was it not?

A. All I wanted to show was the royalties, sir, that had been earned.

XQ. 143. On patents assigned to the Chemical Foundation?

A. To the Chemical Foundation.

XQ. 144. And you recognize, do you not that this statement—not purposely; I do not mean to be at all offensive to you—would be misleading if in fact it showed returns on other patents than those assigned to the Chemical Foundation?

A. It would be, but it does not take any of them in.

XQ. 145. Did you find out whether in fact the returns covered not only under licenses referring to patents conveyed to the Chemical Foundation but also all other patents in the same class owned by alien enemies?

A. That statement only contains patents that were transferred to the Alien Property Custodian.

MR. ANDERSON: To the Chemical Foundation.

XQ. 146. To the Chemical Foundation.

A. Pardon that expression. I mean the Chemical Foundation rather than Alien Property Custodian.

XQ. 147. You say it does contain only such. Where did you get the information from?

A. The sources of information were the Alien Property Custodian's Office.

XQ. 148. What did you get out of the Alien Property Custodian's office that you used in compiling this Exhibit 198?

A. Not Exhibit 198; that is from the Federal Trade Commission.

XQ. 149. That is the only thing I am talking about now, so we will disregard the Alien Property Custodian. Now go on and answer the question.

A. That would be the Federal Trade Commission's cards.

XQ. 150. Did you see the licenses issued by the Federal Trade Commission—

A. I did not.

XQ. 151. (Continuing) So as to convince yourself that those covered only patents that were conveyed to the Chemical Foundation?

A. No.

XQ. 152 What record was it that you took, I mean record of the Federal Trade Commission, as a basis of this Exhibit 198?

A. Cards that were furnished by the Federal Trade Commission.

XQ. 153. Just the cards?

A. Yes, sir

XQ. 154. You mean those cards that were offered here by Colonel Anderson?

A. That is true.

XQ. 155. I notice on this Exhibit 198, under license No. 27, which I will ask you to look at, under date of June 28, 1918—do you see?

A. Yes, sir.

XQ. 156. There were six patents given there by

number, which were covered by that one license, do you notice that?

A. Yes, sir.

XQ. 157. And after the last number you have the symbol "etc." What does that mean?

A. It means there were others and I could not get them in there.

XQ. 158. Other patents?

A. Yes.

XQ. 159. How do you know that those were patents that had been conveyed to the Chemical Foundation?

A. Because it appears on that card, sir, under that license.

XQ. 160. What appears on the card? Just get the card you are talking about.

A. Surely. It gives all the numbers.

XQ. 161. Just get the particular card that we are talking about now?

MR. ANDERSON: I am afraid that I have to urge my objection again. I do not want to restrict the cross-examination further than necessary but if we are going to produce the original cards, would you not rather ask that question when the original card is here?

MR. KRESEL: No. Perhaps the Colonel misunderstands. I am searching this witness's memory as to the basis for the making up of this statement. He says that he used these very cards. He does not say that he used any other cards. Have I not the right to question him as to the card, whether it is in evidence or not? If he said that he used the original cards, I might see some force in the Colonel's statement and objection.

THE COURT: The Exhibit No. 198, as I understand it, was put in evidence over your objection, to show the income by way of royalties received

by the Federal Trade Commission upon the patents that were assigned by the Alien Property Custodian to the Chemical Foundation, Incorporated. You are challenging now, by cross-examination, the correctness of that exhibit by pointing out that the licenses issued were for certain patents and for such others—I do not recall the class exactly—but for other patents of the same class. You are trying now to ascertain from this witness whether or not by any chance, this Exhibit 198 does include royalties received from patents other than those assigned by the Alien Property Custodian to the Chemical Foundation?

MR. KRESEL: To the Chemical Foundation.

THE COURT: This witness has indicated that it does not, and that he got his information from certain cards, and you are asking him to refresh his recollection from those cards.

MR. KRESEL: And to point out to me what there is on the card to substantiate the statement that he has made.

MR. ANDERSON: That last part can not go in without putting in the card.

THE COURT: You can have the cards marked for identification if you refuse to deliver the cards to Mr. Kresel.

MR. KRESEL: I do not understand that the Colonel takes that position.

THE COURT: You can have the cards marked for identification, or Mr. Kresel can put it in. You can go ahead.

MR. ANDERSON: Are you ready, Mr. Kresel?

MR. KRESEL: Certainly.

MR. ANDERSON: I understand your Honor overrules the objection?

THE COURT: If you mean to say that he can not use these cards, and you are willing to pro-

duce them, I will overrule that. If you mean to say that the cards must speak for themselves, and they are not put in, this evidence will go out, but I do hold now that this witness may use these cards to refresh his recollection and to indicate thereon the data which he used in compiling this report or this Exhibit 198.

MR. ANDERSON: Then, in order to get the record clear, if the witness can state the basis of his information from the cards, Mr. Kresel can cross-examine on the cards, but we can not put cards in.

THE COURT: You have a different state of facts here but I will have to rule on that after you put the card in if it becomes proper to do so. There has been no offer which has been passed on by me so far.

MR. ANDERSON: There was an offer, and he objected upon the ground that it was secondary.

MR. KRESEL: That was not upon my cross-examination. That was upon my direct.

MR. ANDERSON: I will let it go for the present.

MR. KRESEL: We have lost sight of the question, I think now. (XQ. 161 repeated as recorded.)

THE WITNESS: You wanted to know why I had only put these six patent numbers in, I mean right behind.

XQ. 163. That was not the question. We had passed that. Your answer to that was, that there were a lot of patent numbers, and you did not want to put them all in?

A. Yes, that is it.

XQ. 164. My next question was this: What information you had from which you were enabled to say in your testimony and in this exhibit that the patents on which these licenses were issued were patents that were conveyed to The Chemical Foundation, and you said, a card?

A. Yes, sir.

XQ. 165. Now, I want you to show me the card?

A. I have the card here.

XQ. 166. Let me see it, please? (Witness hands card to counsel.)

THE COURT: Do you want the card marked for identification?

MR. KRESEL: In just a minute, your Honor.

XQ. 167. Look at that card again, and I will ask you again whether there is anything on that card mentioning The Chemical Foundation in any way?

A. No, and not any of the others either.

XQ. 168. Now, then, what did you mean when you said that the card was the basis for your statement?

A. The Federal Trade Commission states to me that these are—

XQ. 169. Now, I do not want you to give me any conversation.

A. All right, sir.

XQ. 170. You said the card showed it to you. You now say it does not, do you not?

A. That does not show Chemical Foundation, no.

XQ. 171. That is all. Now, let me have it, please?

A. Sure. (Handing.)

MR. KRESEL: Now, I want to have that card marked for identification.

THE COURT: Let it be so marked.

Marked "Defendant's Exhibit A for Identification."

XQ. 172. Mr. Storck, again referring to Exhibit 198, is it not the fact that that exhibit shows that returns reported to the Federal Trade Commission were lump returns under each license, even though the license covered several patents?

A. That is true.

XQ. 173. For instance, this one license No. 27

that I called your attention to, according to Exhibit 198, covered six patents, the numbers of which you have inserted in your exhibit, and a lot of others, the numbers of which you did not put in.

A. Yes, sir.

XQ. 174. Have you shown on that exhibit or in any exhibit that you have prepared and put in here how much of that lump return referred to each patent?

A. Oh, no.

XQ. 175. I notice on Exhibit 198 the word "out" in the first column. What is the significance of that?

A. It means that, for instance, license 25 is Chemical Foundation; License 26 was not Chemical Foundation, and therefore it is marked "out."

XQ. 176. What you mean is that where you have the word "out" it is a license that you did not take into consideration in that exhibit?

A. Surely; because it is not Chemical Foundation.

MR. KRESEL: I ask that the last part of it, that "it is not Chemical Foundation," be stricken out because the witness has already shown that he knows nothing about it.

THE COURT: What is your motion?

MR. KRESEL: I move to strike out his comment that it was not Chemical Foundation, the witness having already shown that he had no information upon the subject whatsoever.

MR. ANDERSON: If your Honor please, I do not think that is a fair statement of the witness's position. Mr. Kresel has only asked the witness whether a certain card identified these patents as relating to The Chemical Foundation. The witness started to explain his information from the records of The Chemical Foundation as to the cards, and he could have explained how he identified them. He only was allowed to answer that portion of the question. Now he is asked why he

marked out a certain license on that paper. He is entitled to make a full explanation of why he marks "out." In other words, he cannot stop him in the middle of a sentence. If he can show that he did not have any information as to what was assigned to The Chemical Foundation and what was not, then that might be a different question. But he has not shown that. He has merely shown that on a certain card, there was nothing on that card to show Chemical Foundation. But the witness showed in his direct examination and has shown in his cross-examination that he made a careful examination of the records of the Federal Trade Commission and of the Alien Property Custodian for the purpose of bringing this information before the Court in this suit, in which suit all these patents are numbered and designated.

MR. KRESEL: If your Honor please, I have not asked the witness why. I am always careful to ask no witness on cross-examination the question why, because I know that opens the whole world to him. But I did ask him, and my question was this, what is the significance of the word "out."

THE COURT: Yes.

MR. KRESEL: Now, he states that that means that he did not take that particular numbered license into consideration, and his subsequent comment as to the reason why he did not do it, I did not ask him for, and I do not want him to put that in. I am not bound by it.

THE COURT: It is that portion that you move to strike out?

MR. KRESEL: Exactly, your Honor.

THE COURT: I did not understand that you addressed yourself to that particular matter, Colonel Anderson, did you?

MR. ANDERSON: I do; yes, sir. I object to it being stricken out because I think the witness is entitled not to be left with his answer suspended in mid-air and a portion stricken out.

THE COURT: This is cross-examination. If you want to bring that out in direct, Colonel Anderson, you may put that question at the proper time. But it is not responsive; it is a voluntary statement not called for by the cross-examining counsel. You do not contend that a voluntary statement should stay in, do you?

MR. ANDERSON: Not a voluntary statement, but I think a reasonable explanation of what he did is properly within the bounds of cross-examination.

THE COURT: I think not. It will go out. If you want to bring that out, you may do so by recalling him on re-direct.

XQ. 177. Your Exhibit 198 does not show the rate of royalty under these licenses issued by the Federal Trade Commission?

A. No, sir.

XQ. 178. You know, do you not, that the rate of royalty differed?

A. It did.

XQ. 179. In some licenses it was one amount and in other licenses it was a different amount?

A. Yes, sir.

XQ. 180. The figures that you have given, that you say you obtained from the records of The Chemical Foundation—do they include returns to The Chemical Foundation not only on patents, but also on contracts, copyrights and trademarks assigned to it by the Alien Property Custodian?

A. They do, sir.

XQ. 181. And your compilations and the figures

that you have presented here cover the period from December, 1917, to December 31, 1922?

A. Yes, sir.

XQ. 182. In your Exhibit No. 200, under the heading "Period Covered," you give as the first item December 31, 1917?

A. Yes.

XQ. 183. The period covered really antedates December 31, 1917, does it not?

A. Yes, sir.

XQ. 184. How far back of that date do these figures that you have compiled cover?

A. Some as far back as 1916.

XQ. 185. What month in 1916?

A. That I do not recall, sir; but it is to December 31, 1917.

XQ. 186. I quite understand that, but I am trying to find out when you started?

A. I took from the very first that they had there, but I do not recall the date.

XQ. 187. That was some time in 1916?

A. Yes, sir.

XQ. 188. And the figures that you have presented cover the total for the entire period beginning 1916 some time to December 31, 1922?

A. Yes, sir; that is right.

XQ. 189. Confining ourselves to the records of The Chemical Foundation, will you tell us how much was received by it on patents from April 10, 1919, to December 31, 1922?

A. May I have Pasley & Conroy's account?

XQ. 190. I am handing the witness a book containing Plaintiff's Exhibit No. 201. (Your Honor will recall there is only one page in there that is an exhibit.) Now, have you the question?

A. Yes, sir.

XQ. 191. Will you answer it?

MR. ANDERSON: May I have the question read?

(XQ. 199 repeated as recorded above.)

MR. ANDERSON: If your Honor please, I have only introduced in evidence the one exhibit from the records of The Chemical Foundation and counsel have not put the remainder in. I do not know the purpose of this question.

MR. KRESEL: I will tell you the purpose. It is no secret. I want to get on the record how much of this total that the witness has testified was received by The Chemical Foundation was received by it on patents, how much on trademarks, how much on copyrights, how much on contracts; that is all I want. If he wants to use that to refresh his recollection, there certainly can be no objection.

THE COURT: Do you withdraw your objection, Colonel Anderson?

MR. ANDERSON: Yes, sir. If that is the limit of the purpose, I have no desire to object to its going in.

MR. KRESEL: Yes, that is the entire purpose.

A. (To Q. 189) I am reading from Exhibit B, Schedule 1 of Plaintiff's Exhibit 201, being Pasley & Conroy's report, royalties and license fees, summary of detail sheets Nos. 1 to 19.

XQ. 192. Will you stop there a minute, please. I have got to interrupt you. I do not want Pasley & Conroy's statement. I want your testimony. You understand?

A. Yes, sir.

XQ. 193. If you want to adopt Pasley & Conroy's report, that is up to you?

A. I am perfectly willing to do that.

XQ. 194. That is all right, but I am asking you for your testimony. I want to know what your ex-

amination of the books of this defendant shows, you see?

A. I have vertified these—

MR. ANDERSON: I do not want to interrupt, but I do think that this fact should be brought to your Honor's attention. The witness testified that his figures of The Chemical Foundation were based upon a report made by the expert accountants of The Chemical Foundation, being reputable accountants, which report was furnished to him by the officers of The Chemical Foundation for making up his figures. We accepted that.

THE COURT: You mean that he stated in direct examination that he has no information pertaining to their books except from what is disclosed by this report?

MR. KRESEL: Why, he expressly testified, your Honor, that he made an examination of the books and records of The Chemical Foundation.

THE WITNESS: I certainly did, sir.

MR. ANDERSON: I had understood, and I think I must state this, that we would accept the report of these expert accountants of The Chemical Foundation as an examination of the books, which our accountants could check, and that would be accepted in court as an examination of the books. Now, if counsel propose to go back into the books of The Chemical Foundation, then I ask for the production of the books, and I will have them examined from the beginning and checked. I understood that we were proceeding on an arrangement that the report would be accepted as an examination of the books of The Chemical Foundation.

MR. KRESEL: Colonel Anderson does not misunderstand me, and, Colonel, any books you want produced you can say so and we will produce them.

You do not have to threaten me with that. We will produce them.

MR. ANDERSON: I am not threatening.

MR. KRESEL: I understood this witness to say upon his direct that he had made an examination of the books and accounts of The Chemical Foundation. I understand him now to verify that. If there is any doubt about that, I ask leave now to ask him the question.

By MR. KRESEL:

XQ. 195. Mr. Storck, is it not a fact that you made an examination of the books and records of The Chemical Foundation and were working at it for a period of six weeks?

A. Not me, sir; no, sir.

XQ. 196. Who did, for the Government?

A. The Department of Justice did.

XQ. 197. And when?

A. Last year.

XQ. 198. And were you not personally in charge of that examination?

A. I was for several days.

XQ. 199. And only as late as last Monday, didn't you go to the office of The Chemical Foundation and make some examination?

A. Yes, I certainly did.

XQ. 200. When you said yesterday in answer to the direct examination that you had made an examination of The Chemical Foundation books, you meant just that, did you not?

A. I meant that I had taken the figures of Pasley & Conroy's report and verified them.

XQ. 201. Very well. And in verifying them, you looked at the original books, did you not?

A. Surely.

THE COURT: Now, then, what is the question?

MR. KRESEL: The question is, how much of

the total that he has testified was received by The Chemical Foundation was received by it in return on patents.

THE COURT: Is there objection there, Colonel Anderson?

MR. ANDERSON: There is no objection to that question, but I would like now to have a distinct understanding from counsel as to whether he is going to object to this evidence on the ground that it is not the best evidence.

MR. KRESEL: No, sir. I have so stipulated.

MR. ANDERSON: Either on our side or their side. I have been proceeding on the theory here—

THE COURT: Either I am mistaken as to this or you are, Colonel Anderson. It is purely a question of getting an understanding of Mr. Kresel's position. He is trying to cross-examine this witness, and that alone, as I understand it, to get to the accuracy of the exhibits which have been put in by you as having been compiled and made up by this witness. As I understand the question, it is not directed at all to challenging the stipulation which you have now disclosed to me.

MR. KRESEL: No, sir. I have stipulated here that I shall not object to the introduction of these papers upon the ground that they are not the formal and proper proof, and I think I have observed that stipulation.

MR. ANDERSON: What I meant was this, and I do not want to do Mr. Kresel an injustice, but very often we naturally misunderstand each other. I intended to wait until the conclusion to say this, but the questions which he has directed to this witness would, if he insisted upon it and made it the subject of objection, entirely destroy all these statements because of the fact that they

are not the best evidence. You have to prove them formally.

I did not imagine for a moment or suggest that Mr. Kresel was not keeping and going to keep any agreement between us fully, but simply as to whether I understood him. We might have misunderstood each other in the best of faith, and now is the time to find out. Therefore, I merely want to make it very clear on the record that this matter, if made the subject of objection of formal character, might throw out this evidence.

MR. KRESEL: Not at all. It was not intended to go to that point, and I repeat I raise no objection to these compilations upon the ground that they are not the best evidence.

MR. ANDERSON: If they are going to the question of testing the witness's knowledge or the correctness of these things, assuming them to be formally proved, of course I am not going to object to it.

MR. KRESEL: You see, the point I have, Colonel, is that this witness said Pasley & Conroy's report shows that. That is not what I want. I want his testimony, and he shows he can give it, because he checked it back to the books.

MR. ANDERSON: Quite willing to have you do that.

XQ. 202. Now, please give us the answer to the question, how much did they receive on patents?

A. For the licenses of patents for manufactured products they received in license fees $28,200, and total royalties down to December 31, 1922, of $267,973.02.

XQ. 203. The total of those two items is the total of all returns received by The Chemical Foundation according to their books during this period on patents?

A. Right.

XQ. 204. Now, tell me how much according to their books they received on these contracts so assigned?

A. On contracts acquired from the inception of the company to December 31, 1922, $2,442.06.

XQ. 205. How much did they receive on copyrights?

A. It is not stated here; it is not stated.

XQ. 206. Do you know—

A. I do not.

XQ. 207. (Continuing) whether they received anything on copyrights?

A. No, sir.

XQ. 208. You do not know, or they did not receive anything?

A. I say I do not know. It does not show.

XQ. 209. In your examination of the books and records of The Chemical Foundation did you not try to find out whether those books showed that The Chemical Foundation had received anything on such copyrights?

A. No, I did not go particularly into the copyrights. I went into trademarks and everything that represented royalties.

XQ. 210. Will you say whether their books show that they received anything on trademarks?

A. Yes, sir.

XQ. 211. How much on trademarks?

A. Down to December 31st—that is, from the inception of the company?

XQ. 212. Yes, down to December 31, 1922?

A. $8,596.76.

XQ. 213. Mr. Storck, in your examination of the Federal Trade Commission you said, did you not, that a license had been issued by the Federal Trade Commission on what are known as the Haber patents?

A. I would not know, sir.

XQ. 214. What?

A. I would not know the names of those patents.

XQ. 215. You would not know them?

A. No, sir.

XQ. 216. I am going to ask you when you make this further examination of the books and records of the Federal Trade Commission to pay particular attention to the license issued by the Federal Trade Commission on the Haber patents, because I shall ask you about that when you resume the witness stand?

A. Would you give me the numbers of the patents, Mr. Kresel?

XQ. 217. Yes. I will be very glad to do that. Now, when you made the examination of the books and records of The Chemical Foundation, did you get everything you asked for?

A. I certainly did.

XQ. 218. They gave you every facility to make the examination?

A. They did.

XQ. 219. You made such copies of their records of books as you desired?

A. I did, sir.

XQ. 220. Did you find whether Mr. Francis P. Garvan, as president, received any salary?

MR. ANDERSON: I object, if your Honor please. That is not within the direct examination. We are not going to expenses of The Chemical Foundation, and that is entirely outside of the direct examination. That is a question for counsel to prove by his own witnesses if he puts in his records. The best evidence of what Mr. Francis P. Garvan received is certainly the testimony of himself and the original records of his receipts, and not the information of this witness, except from what he may get from their books, which would be purely a declaration in their own interest.

MR. KRESEL: I desire to be heard on that, your Honor. Of course, the Government is not going into the question of our expense. They are not doing that because in their view that is not part of their case, but your Honor would certainly want to know what expense was entailed in administering these patents, because if this evidence that is being placed before your Honor of our receipts is given only for the purpose of having your Honor being in a position of determining the value of these patents, there can be no such determination unless the Court has before it the evidence of what expense there was in connection therewith.

Now, have I not a right upon cross-examination of their own witness, to bring out whatever I can with reference to those expenditures? Of course, he has no personal knowledge of them, but I am asking him what he saw on our books, that he says he examined for the Government; and I claim upon cross-examination that I have an absolute right to have this witness tell me everything he saw in those books, that the Court will say is material. And I am reminded of the fact that the Government alleges in its Bill that we are wasting its assets and that the Court will not be in a position to enforce a judgment against us.

What better or more credible witness does the Government want upon those facts as disclosed by our books than their own witness, their own accountant? I have a right to show just what our books show, by this man; and I propose to do it unless the Court stops me.

MR. ANDERSON: If your Honor please, I do not deny the right of counsel to show what their expenses are. I do not deny the right of counsel

to show whether they are wasting or conserving their assets at all. I do not question that. But I do deny the right of counsel to interrogate witnesses that I may put on the stand for a specific and limited purpose, and take them outside on cross-examination and try to make their case when the Government is presenting its case. If they want to call this witness as their own witness, at a later date, he will be available. If they want to put on witnesses to prove their expenses, or to prove their conservative management, if such exists, they are at perfect liberty to do so, and reply to the allegations of the Bill all they want; but my objection goes absolutely to the point that counsel cannot take a witness put on the stand for a specific purpose, and go outside and undertake to prove their own case by what this witness may have found on their own books, relating to something as to which he was not examined on direct examination, bringing in their books in their own favor apparently by a Government witness on a matter on which he never investigated.

Mr. Kresel: If your Honor please, this witness has undertaken to testify as to what our books show was our income. It is my claim that I have a right to show by the same witness, and upon cross-examination of that witness, to offset any effect that his direct testimony may have, what our expenditures were, according to the same source of information from which he derived his information as to our income.

Now, there cannot be any question about that, and I have a right to do it upon cross-examining this witness.

The Court: I think the extent to which you can go is to inquire as to whether this statement introduced in evidence purports to negative the

fact that The Chemical Foundation had any expense. It purports on its face, as I understand it, merely to show the income. There might arise from that an implication that there were no expenses and that this was consequently net income. Whether it is gross income or net income you may infer.

MR. KRESEL: Does not that appear on the exhibit?

MR. ANDRSON: You can ask that question now. I have no objection in the world to your asking that question now.

MR. KRESEL: No; I am not going to be confined to one question about it.

THE COURT: You may inquire as to whether this is net income or gross income. There, I think, in cross-examination, you will have to stop. If this is merely shown to be gross income, the remainder of your argument goes to the value of these exhibits.

XQ. 221. Mr. Storck, the amount of $675,345.10, which, according to your Exhibit No. 199, was the income of The Chemical Foundation from its inception to December 31, 1922, on properties assigned to it by the Alien Property Custodian, was that gross income or was that net income?

A. That was gross income.

XQ. 222. In other words, you have not deducted from their income anything for expenses?

A. I have not, sir; no, sir.

XQ. 223. Of course, they have had expenses, according to the books, as you saw them?

MR. ANDERSON: I object to that, if your Honor pleases.

THE COURT: Do you press the question?

MR. KRESEL: No. No, I do not press the question.

XQ. 224. Can you tell us what the books showed was the capital of this Company?

A. Yes, sir.

MR. ANDERSON: I have to make the same objection, sir. The records disclose what the capital was, I think, in other connections.

MR. KRESEL: No, it does not.

MR. ANDERSON: Then I object to it because that is a matter that was not taken up at all on direct examination.

THE COURT: This question is not strictly cross-examination.

MR. KRESEL: Will you not permit me, your Honor, at this time bowing entirely to your Honor's ruling, that this is not cross-examination, to make this witness my own for the purpose?

THE COURT: Not over the objection of the Attorney General.

MR. KRESEL: Do you object to that, Colonel Anderson?

MR. ANDERSON: I am afraid I have to, because I do not want to get into that question at the present time.

MR. KRESEL: In other words, having shown that we have received $675,000, you will not now let me show what our expenses have been, is that it?

MR. ANDERSON: I must say that if we are going into that we will be in this matter for a very long time. I think that is affirmative defense, and I must confine myself to that.

MR. KRESEL: But your Honor's ruling is that I cannot do it over objection?

THE COURT: On the ground that it is not in cross-examination. That they have undertaken to show your gross income only, and have not attempted in any way to show your net income.

MR. KRESEL: Well, now, let me ask this:

XQ. 225. You have been testifying here about receipts on patents. Will you tell us how many patents you referred to that these receipts apply to?

A. I cannot tell you that, Mr. Kresel.

XQ. 226. Did the books not show it?

A. I did not count the patents.

XQ. 227. Did not the books that you examined, of The Chemical Foundation, show on how many patents they received this return?

A. I suppose it did. I cannot tell you directly, though.

XQ. 228. Did not the books show how many patents had been assigned to The Chemical Foundation by the Alien Property Custodian?

A. Yes, sir.

XQ. 229. Will you tell us how many, according to their books?

A. Off-handedly, I would say between forty-five and forty-seven hundred.

XQ. 230. I do not want to know what you did off-handedly. You are an expert accountant, and I assume that you are exact in your statements?

A. Exactly.

XQ. 231. Do you not know how many?

A. I did not count the patents; no, sir.

XQ. 232. I did not ask you whether you counted the patents. Do not misunderstand me.

A. Yes.

XQ. 233. There was a record on their books, was there not, of what patents they had received?

A. Certainly.

XQ. 234. All right. Now, I want to know how many there were?

A. I do not know.

XQ. 235. Their books showed, did they not, the number of each patent on which a return was received?

A. Yes, sir.

XQ. 236. All right; now, tell me on how many patents they had any receipts at all?

A. I would have to make an analysis of that.

XQ. 237. You did not do that

A. No, sir; certainly not.

XQ. 238. Their books showed how many patents had expired since April 10, 1919, and to December 31, 1922, did they not?

A. Yes, sir.

XQ. 239. How many expired?

A. I do not know.

MR. KRESEL: That is all.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 240. Mr. Storck, you were asked whether your exhibit, 197 I think it was, showed when the money was paid to the Alien Property Custodian, that is the first, the Alien Property Custodian's money?

A. Yes, sir.

RDQ. 241. Did you say that it did not show the dates of payments?

A. It does not show that.

RDQ. 242. The dates of actual payments?

A. No, sir.

RDQ. 243. It shows the periods between which the payments were made?

A. Yes, sir.

RDQ. 244. Now, I will ask you to get from the records of the Alien Property Custodian the dates of payment, if you can do it. Can you do that?

A. Yes, sir; I have asked for that already and they are here, but I have not had a chance to go over them.

RDQ. 245. But you will make that up and submit

a copy of the statement and also the records to counse on the other side, will you?

A. Yes, sir.

RDQ. 246. And be prepared to testify?

A. Yes, sir; and arrange with their accountants.

RDQ. 247. You were asked when the payment under the Federal Trade Commission licenses wer made to the Alien Property Custodian. As I under stand, the amounts accruing under those licenses ar paid direct to the Alien Property Custodian, are they

A. Yes, sir.

RDQ. 248. And you included those payments o your statement, Exhibit 198, but I believe testifie yesterday that you had not checked the actual date of payment on the books of the Alien Property Cus todian?

A. No, sir; I have not. That is also arranged for

RDQ. 249. You will check that?

A. Yes, sir.

RDQ. 250. And furnish a copy of the information together with the records, the original records, to th accountant representing the defendant here, and b prepared to testify?

A. It is so understood; yes, sir.

MR. KRESEL: It is my understanding, Colonel that our accountant is to have the privilege o seeing the record.

MR. ANDERSON: Oh, absolutely; and if there are any of the records that are not here, that you want to see, we will either have them brought here or you will have free access to them in Washing ton, if they are too voluminous. There is no limit to that agreement.

RDQ. 251. You spoke of cards accompanying memoranda in the records of the Alien Property Cus todian, one of which was identified, and questions asked you as to the same. The originals of those cards and

memoranda are in the office of the Federal Trade Commission, I should have said; is that true?

A. That is correct; yes, sir.

RDQ. 252. Will you get those originals here and have copies made, furnishing the same, together with the originals, to the accountants for the defendant, to the end that they may be verified?

A. Do you mean have copies made of them again?

RDQ. 253. No, the present copies or other copies, see that they conform absolutely to the originals, to the end that we won't have to introduce the originals of Government records:

A. Yes, sir.

RDQ. 254. And furnishing them to the other side before you testify again, to the end that that information may be put in.

A. I will do that.

MR. KRESEL: Colonel, we desire the privilege of seeing the originals.

MR. ANDERSON: Oh, you will see the originals, and the originals, together with the copies, will be furnished you; and if the record is not complete to your satisfaction, we will arrange for your full access to the original records in Washington before we put in the proof.

RDQ. 255. Does your Exhibit 198 show the dates of issue of the various patents or licenses, as shown on that exhibit?

MR. KRESEL: Is it the license under the patents you are talking about?

MR. ANDERSON: I am talking about the issue, the date of issue of the original patents or the licenses.

A. It does not.

RDQ. 256. It shows the date of issue of the license?

A. No; the date of the issue of the license is not

shown. All I have is the date it was assigned to T Chemical Foundation, but not the date of issue anything else.

RDQ. 257. On your statement of accounts the are the amounts accrued under the Federal Trade Co mission licenses?

A. Not on 198. It would be the Alien Proper Custodian.

RDQ. 258. Is it 198. I thought it was 199.

A. 199, I believe, would be the Federal Tra Commission exhibit.

RDQ. 259. That large exhibit?

A. The large one.

RDQ. 260. Does that show the date of the licens

A. No, sir.

RDQ. 261. Then I will ask you to obtain a bring here the original licenses.

MR. ANDERSON: Are they in your possessio

MR. KRESEL: No, sir.

RDQ. 262. They are in the possession of t Federal Trade Commission?

A. Yes, sir.

RDQ. 263. Copies of them, at least. Bring t originals here, Mr. Storck, by next week, if you c do it, will you?

A. I do not believe I can get the originals. I c get the copies.

MR. ANDERSON: The originals would be in t hands of the licensees.

MR. KRESEL: Get the copy, if you will, whi the Federal Trade Commission has.

THE WITNESS: I will do that.

MR. KRESEL: I will take their copy if th say it is a copy.

THE WITNESS: I will do that.

MR. ANDERSON: That is what we want. W will get that in. Mr. Kresel, I will ask you

you are willing to agree to this, and if not, I will strike it off the record so there is no reference to it. I ask you if you are willing to agree that The Chemical Foundation have instituted suits against the Treasurer of the United States and others to recover the royalties accrued under the Federal Trade Commission licenses, and will you furnish me a statement of what those suits are and what licenses they cover, together with a copy of one bill which I can say is identical with the others—was it, I mean in the essential features?

MR. KRESEL: Similar.

MR. ANDERSON: Yes, in essential features.

MR. KRESEL: Colonel, I am very glad that you made this suggestion, but, of course, if we give the Court a peep into this we are going to let the Court see the whole thing.

MR. ANDERSON: Oh, of course.

MR. KRESEL: All right. There are not only suits by us, but suits by the Alien for the same money, and the Government stands in the middle between them and says that it owns the money. I am perfectly willing that the Court should know all about it, and I will co-operate with you in arranging for a stipulation such as you suggest, and a sample complaint by all the complainants in all the suits.

MR. ANDERSON: Very good. Then we will try to have that arranged out of court instead of stipulating it here now. I don't think we could now.

MR. KRESEL: Yes.

MR. ANDERSON: So I won't examine on that question at all.

MR. KRESEL: You could not do that now.

RDQ. 264. Mr. Kresel asked you as to the earn-

ings or receipts of The Chemical Foundation from these royalties since the assignment of the patents. You gave some of the items—that is, trademarks—and you said, I think, you found nothing as to copyrights—

MR. KRESEL: And he gave the patents, too.

MR. ANDERSON: And he gave the patents.

RDQ. 264. (Continued) Did the items which you then gave cover all the items making up the sum total, the net total which you gave?

A. No, sir.

RDQ. 265. Would you give them all?

A. Surely.

RDQ. 266. Let us get them all together.

A. The ones that were omitted were Imported Products under War Trade Board licenses, the amount being $154,539.02; miscellaneous income, $2,456.67; and license fee of $30,900.

RDQ. 267. The miscellaneous income, I understand you to say, did not relate to the royalties?

A. It relates to royalties, but it is a big and long number of schedules in here. It is carried on this summary of detail royalties and licenses, so it must relate to royalties.

MR. ANDERSON: Won't you agree that that was in settlement of certain infringement controversy?

MR. KRESEL: Colonel, I am willing to take your statement as to that.

MR. ANDERSON: Will you agree that that item was an adjustment of miscellaneous infringement matters?

MR. KRESEL: Not all. There were others. It is a miscellaneous account of odds and ends.

MR. ANDERSON: That is all right.

THE WITNESS: Well, that would bring up the total, sir.

RDQ. 268. That would bring up the total?

A. Yes, sir.

RDQ. 269. The items into which you have divided the earnings of the Chemical Foundation are revenues from royalties under patents—

A. Under manufactured products—imported products, contracts acquired, licenses, trademarks, imported products under War Trade Board licenses and miscellaneous income.

RDQ. 270. And those items together make up the total which you have already given?

A. Yes, sir.

MR. ANDERSON: Of course, we will have to call him both for re-direct and cross when we get this additional data. With that understanding I will let the witness stand aside.

THE COURT: Any further cross now?

MR. KRESEL: No, your Honor.

CHARLES ROOME PARMELE.

CHARLES ROOME PARMELE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and place of residence?

A. Charles Roome Parmele, New Brighton, Staten Island, New York.

Q. 2. What is your business, Mr. Parmele?

A. Manufacturing chemist.

Q. 3. Are you the officer of any manufacturing chemical corporation, and, if so, state what?

A. President of the Chinosol Company and president of the Parmele Pharmacal Company.

Q. 4. Where are those corporations loc
Where is their business?

A. 47 West Street, New York.

Q. 5. That is your office there, is it not?

A. Yes, sir.

Q. 6. State generally what the business of
corporations is?

A. I manufacture pharmaceutical prepara
which are sold through the medical profession.

Q. 7. Yesterday there was put in evidence
several letters between the Alien Property Custo
and The Chemical Foundation relating to Patent
906,918 issued December 15, 1908, originally take
by Leopold Ostermann, of Germany. Are you
your company the owner of that patent; if so,
was it acquired?

MR. KRESEL: In the first place, we object
the ground that that is calling for the conclu
of this witness; but, aside from that, your H
will recall that there was considerable corresp
ence put in yesterday over our objection bea
upon this gentleman's claim. I think your H
will recall that it appeared from that evid
that the patent in question, though originally
veyed to The Chemical Foundation, was giver
that they finally wrote this gentleman that
had no claim on it and gave it up. Of co
I do not know what more this gentleman
testify, nor what more the Government desire
prove by him, but as to this particular ques
inasmuch as there is a question of owners
this witness ought not to be permitted to
close the Court by his opinion as to whethe
was the owner. If he became the owner, he
it by assignment, and that assignment will s
for itself, or, if he was the inventor, the pa
was issued to him, and that will speak for its

MR. ANDERSON: So far as the first point made by counsel is concerned, I do not want to review the issues of this case to show that this evidence is relevant on at least three issues, and I take it under the rule under which the Court is operating we do not want to go into a discussion of that if I make that statement to the Court. On the second point, if the counsel urges his objection, we must produce the original papers. I am willing to concede that the question cannot be answered without the production of the original papers. Then I would have to have the witness stand aside and have him produce the original papers if he has not got them—that is, from the Patent Office, or copies, which I understand they will permit to go in, and assignments. Is that true? In other words, under our stipulation you will allow copies of the Patent Office to go in. We have agreed on that. Also copies of the assignments from the Patent Office?

MR. KRESEL: We did not agree on the specific thing, but I will not object to the copies if you say they are correct copies.

MR. ANDERSON: If that objection is urged, of course I will get those original papers.

MR. KRESEL: I do urge the objection.

MR. ANDERSON: Would you be willing to let this witness testify on my assurance that the copies of those papers will be produced, and, if they are not produced, the witness's evidence may be stricken out?

MR. KRESEL: Yes, you may do that.

MR. ANDERSON: Then so far as that is concerned, we will proceed in that way. I do not want to recall him.

Q. 8. Subject to the further proof with respect to your ownership of this patent, the number of which

I have referred to, I would be very glad if you would state when or about when it was acquired by you, and then I will ask you to produce an assignment.

Mr. Kresel: We object to that, if your Honor please, upon the ground that it is immaterial and irrelevant when this gentleman obtained the patent.

Mr. Anderson: If your Honor please, I think I might just as well make the relevancy of this evidence perfectly clear, and if the technical objection is insisted upon, I will call the witness again. The defendant here contends two things: First, that they were not dealing with patents which were in active use at that time in American industry.

Mr. Kresel: Where is there any such claim?

Mr. Anderson: I said in active use at that time in American industry. I have read into the record any amount of evidence to the effect that this applied only to patents which were not in use in American industry. They were lying idle in the Patent Office. Second, that the great aim and purpose of the Dyes Institute in acquiring these patents—

Mr. Kresel: You do not mean the Dyes Institute.

Mr. Anderson: Well, The Chemical Foundation, all the stock of which was owned by the Dyes Institute, that has been proven—

Mr. Kresel: That is not quite right, either.

Mr. Anderson: (Continuing) To acquire these patents was to protect American industry from German invasion. I will put it that way. It is averred in the answer in this case that in every instance where it has been found that patents were owned by Americans or where the patent related to something not connected with the chem-

ical industry they would return it. It is further claimed here that the purpose of The Chemical Foundation was to advance the interests and aid legitimate American industry. That is what it is claimed it was organized for. Our contention, to the contrary, is that from the very inception this proceeding which has been under investigation was conceived, organized and carried into effect for the one purpose and the controlling purpose of securing for the benefit of a private industry property held in trust by the United States, without, I ought to say, seeking to attack the purposes of all these gentlemen, but on the mistaken idea that such an act was of such public benefit as to be within the scope of the power of the Alien Property Custodian. I will put it that way.

We claim that that object and purpose was not only a conspiracy to obtain property without any adequate consideration, but that it was a direct violation of the Statutes of the United States and a contract made with that object and purpose was *ab initio* void as to the United States. That goes to the very basis of this whole thing.

If we show here—and we have shown a number of instances; it has been a laborious task, and this is a laborious case—that the Alien Property Custodian, I will put it first—in the haste which was manifested in the conveyance of this property belonging to hundreds of people, without regard to the consideration or to the rights of the respective owners or their values or anything else, seized property of American citizens of great value, and after notice which probably would conform to the provisions of Section 9 and therefore suspend the right of the Alien Property Custodian to convey; that after written notice to the Alien

Property Custodian, the property, which was the property of American citizens and claimed accordingly, was conveyed to this defendant, for $50, when it had a value of thousands of dollars; and that when this was done and this fact was brought to the attention of the Alien Property Custodian, he did nothing whatever, and at the time the Alien Property Custodian was president of The Chemical Foundation, and for six months no reply could be obtained; and finally when he was pressed to the point, referred it to the officers of The Chemical Foundation for adjustment, although under Section 9 of this Act once a property had been seized nobody but the President of the United States had the right to return it and determine that the person was not an alien enemy (except a Court under a suit); that the Custodian left to the officers of this corporation the right to return this property, and thus to exercise the function of the President; and that this corporation, instead of returning it, went to work and demanded of the owner that he take a license from them and pay them a royalty for the purpose of using his own property in an admitted American industry. I say that all those facts, which we will bring out, are most material and relevant as showing the character of this transaction, of its utter failure to conform to every requirement of a trustee's sale in handling property; of its utter disregard of the rights of the very industry they are talking of protecting and advancing, and of the irregularities in every phase and aspect of this sale, as well as a direct violation of the law, which would tend to invalidate the transaction *ab initio*.

Now, whether we are right in our conclusions of law or not, we are entitled to have those mat-

ters on the record for the consideration of the Court, because, in the consideration of equitable principles applicable to setting aside transactions for fraud, mistake, inadequate consideration, combination of bidders, or other improper sale; everything that will bear upon the equities of the situation must be considered.

If there was undue haste, if there was disregard of the rights of the property interests concerned, if there were any other considerations which tended to show that the Trustee, as we claim here, disregarded the obligations of his trust and was actuated or controlled more by other interests than the interests of his trust, then all those questions, must go to the Court for its consideration.

I beg your Honor's pardon. I did not intend to go into the argument of this question, but I regard this evidence, these various instances and illustrations of the way this matter was conducted —although probably not as connected as we would like to connect it—as most material and one of the most interesting and instructive phases of this whole case, when we come to its consideration. I can not point out all those things every time, unless it is insisted upon.

THE COURT: Colonel Anderson, I shall permit you in this case to give not only cases illustrating the principles that you now refer to, but you may put in every case and give evidence as to every instance of facts of this nature that you can find or know of.

If you have anything to say in reply, I will hear you, Mr. Kresel.

MR. KRESEL: No, your Honor. Your Honor has already ruled.

MR. ANDERSON: If your Honor please, we

have a good many of these cases. We have put in some. We shall put in others.

THE COURT: I shall place no limit——

MR. ANDERSON: I thank your Honor.

THE COURT: (continuing) —on the number of cases of which you may give evidence.

MR. ANDERSON: I am very grateful to your Honor.

THE COURT: Colonel Anderson, your other engagement in Virginia is such that you will not be able to be back here until what time?

MR. ANDERSON: If your Honor please, I think I will have to ask until Thursday morning. I am going to ask that the case be advanced.

THE COURT: Thursday at 8:15?

MR. KRESEL: That is satisfactory, your Honor.

THE COURT: Then when we adjourn, I will take a noon recess and this case will be suspended owing to your engagements until 8:15 Standard Time, Thursday next.

MR. ANDERSON: I thank your Honor very much.

I will start this examination over on the assumption that I have produced a copy of this patent, a copy of the assignment to this witness or his company; and if I do not produce those, this evidence will all go out if objected to.

Q. 9. Mr. Parmele, will you state the date on which you claim that this patent was assigned to you, and I will ask you to let me have a copy of the original of your assignment so that I can produce it?

A. May 6, 1911.

Q. 10. Where is the original of that assignment; in the Patent Office?

A. The original must be there.

Q. 11. Where is the original of the assignment to you?

A. I think I have it.

Q. 12. You have it?

A. In my safe.

Q. 13. Would you let us have it long enough to present it here so that we may produce a copy?

A. Certainly.

Q. 14. Were you operating pour business under that patent from 1911 down to the spring of 1919?

A. I was.

MR. KRESEL: One minute. To that we object upon the ground that it calls for the witness's conclusion as to whether he was using this patent or was not using this patent, and further upon the ground that it is immaterial and irrelevant.

MR. ANDERSON: Very good.

Q 15. I will ask you this question. Did you use these patents in your business from the time of its assignment to you down to June, 1919?

MR. KRESEL: I raise the same objection as I raised to the preceding question.

MR. ANDERSON: I do not want to argue, sir.

THE COURT: I think the objection is well taken. You may take the answer of record.

Q. 16. Just answer the question?

A. From May 11th.

Q. 17. From May 11th down to the present time?

A. Up to now.

Q. 18. From May 11th, 1911, down to the present time you have had this patent. Has it been in active use in your business?

THE COURT: As I understand, your objection runs to all this testimony?

MR. KRESEL: Yes, your Honor.

THE COURT: I think all those objections are well taken, but you may take the answer of record.

A. It has.

Q. 19. I will ask you further if you had a trademark in connection with this patent?

MR. ANDERSON: I will produce primary evidence of that if you wish, Mr. Kresel.

MR. KRESEL: I raise the same objection, your Honor.

THE COURT: I think the objection is well taken. You may take the answer if you desire.

A. I did.

Q. 20. Now I will ask you what if any correspondence you had with the Alien Property Custodian with regard to Patent No. 906,918 and ask you to produce the originals of that correspondence wherever you have it, and state the facts in regard to the same?

MR. KRESEL: I object to his stating any facts in regard to the same. I object to any such indefinite question as that; and as to the correspondence, I direct counsel's attention to the fact that the correspondence is in. We certainly do not want to duplicate that, do we?

MR. ANDERSON: We do not, except to the extent that it is not in. Where it is in, I will not duplicate that, but I can not say until it is produced.

MR. KRESEL: Then the question is simply that he should produce the correspondence.

THE COURT: To that question you do not object.

MR. KRESEL: Certainly not.

MR. ANDERSON: I was trying to shorten it; that is all.

A. (Handing papers to counsel.) That first thing is simply a memorandum to refresh my memory. There is the first letter.

Q. 21. I will give you that back. You made that memorandum yourself, did you?

A. I did.

Q. 22. You have just handed to me what purports to be an original letter dated March 19, 1919, on the letterhead of the Alien Property Custodian, signed "Division of Patents, by R. C. Goldstein, Chief of Division," which refers to and is accompanied by a paper entitled "A Demand Form, Trust No. 36,983, report No. 37,327." Did you receive this original letter accompanied by that demand through the Post Office? A. I did.

MR. ANDERSON: We offer in evidence the original letter referred to, together with the accompanying form of demand which has been described and ask that the same be read as Plaintiff's Exhibits 203 and 203-A. I would ask the Court for permission to substitute copies for any of these papers that the witness may desire as affecting his title.

MR. KRESEL: Can I see that?

MR. ANDERSON: Yes. We have no objection to the substitution of copies?

MR. KRESEL: No, there is no objection to that.

Your Honor has already permitted a portion of this correspondence to go in. I raise the same objection that I raised to the portion now in, namely, that it is immaterial and irrelevant to any of the issues here involved.

THE COURT: I think the objection is well taken. The document is admitted under our general rules.

Received in evidence and marked "Plaintiff's Exhibits No. 203 and 203-A." *(See Exhibits, Vol. I, pages 490, 491.)*

Q. 23. To avoid duplication of the record by re-offering of papers, I will just refer at this point to Plaintiff's Exhibit No. 184, which is a letter from the

witness to the Alien Property Custodian dated Marc 21st, 1919.

THE COURT: How many instances have you o this kind, Colonel Anderson?

MR. ANDERSON: We have a number but I ar only taking those that seem to us to illustrate cer tain facts. I am not going to introduce them all

MR. KRESEL: I want t know how many there are. I think the statement has been made tha there are numerous instances of this sort. I think we are entitled to know.

THE COURT: Colonel Anderson, the purpose of my inquiry was this: You show an assignment of 4800 patents approximately.

MR. ANDERSON: Yes, sir.

THE COURT: Now, then, if you show that somebody made a mistake in seizing and selling a patent that belonged to an American citizen or American corporation, that does not show very much, does it?

MR. ANDERSON: It depends on all the circumstances surrounding the way the mistake was handled, sir. I should say it might be extremely material in some transactions, unless it was purely a mistake and quickly corrected.

THE COURT: The number of instances might give a material bearing to such acts. So my inquiry at this time was directed to the question of how many instances there were that you propose to prove. I shall assume that you will prove all that you have.

MR. ANDERSON: We will go this far, if your Honor please. We will show those instances which seem to us to illustrate the points which we make in this connection best. We have already stipulated into the record with counsel a statement of the patents re-assigned by them, and in that

statement is a brief statement, as I recall, in every instance of the reason just a brief memorandum of the reason of assignment. Some of those reasons, as I remember were prepared at the time the statement was prepared.

Now, I would not undertake to go over all of these re-assignments and analyze them all, but there are certain of them that we think illustrate certain principles which we are going to argue for in this case, and we will put the record in. Now, that answers your Honor's question the best I can at this time.

THE COURT: I do not know whether that means that you have got now before us an instance of a case that is indicative of fraud and an intent on the part of the Alien Property Custodian's office to seize patents which it was not authorized to seize. I do not know now whether this instance is the only instance of that kind you have, or the only instance that you propose to prove, because I shall assume for my part—that is all I am concerned with—that you will prove every case which in your view has any bearing, nearly or remotely upon the issue of fraud.

With that in mind, I was a bit curious to know how many of these instances you are going to prove.

MR. ANDERSON: Go into the details of?

THE COURT: Yes.

MR. ANDERSON: Not a great many. We will introduce or have introduced in proof, substantially the cases that we know of, but we will not go into details of but very few of them; and I may say that I do not mean to say that the seizure of this patent was an actual fraud. I do not believe that the Alien Property Custodian was committing an actual fraud with intent to seize some-

thing that did not belong to him, but there may be such a disregard to the rights of other people as to constitute in equity, a legal ground for action.

THE COURT: I am a bit sorry but I do not undersand you, Colonel Anderson.

MR. ANDERSON: Very well, sir. I will see if I can not make it clearer.

THE COURT: Would you mind my making one further inquiry.

MR. ANDERSON: No, sir.

THE COURT: These seizures were made in the spring of 1919, were they not?

MR. ANDERSON: Yes, sir.

THE COURT: In the period from January to April, or thereabouts?

MR. ANDERSON: No, sir. They were made or taken about, a few of them made in February, the Bill shows, and the greater part of them in March and some of them in April; and they continued on through the next two years.

THE COURT: Before I ask that one question, what is there if it was not in the seizure? Then what is there that indicates fraud here, in your present proposals?

MR. ANDERSON: I prefer to answer your Honor's question a little differently from that. I am going to show the facts, with your Honor's permission, and let your Honor conclude, fraud being a conclusion, from such arguments as we can make, whether there was fraud or not. I have avoided carefully a reference to these things simply because—not because I am afraid of it, as counsel suggests, but because personally I have a very great objection to the use of epithetic fraud, as Mr. Justice Holmes once said.

THE COURT: Let us see if we can get at it from some other angle. What is there in the pro-

posals that you think will tend to establish your right to a decree setting aside the sale or seizure and sale of the Alien owned patents and the transaction of the Government with the Chemical Foundation?

Mr. Anderson: That I am ready to answer, sir. This: That this instance, taken in connection with many others that I need not mention but will be argued, tends to show and goes far to establish an entire disregard not only of legal procedure established by the Alien Property Custodian in the form of regulations, but of the most elementary principles in relation to the dealing with property of this character. Now, assuming that when this property was actually seized, it was a good faith mistake, which I believe it was at that time, but a mistake which was brought about by an anxiety of which I will produce further evidence.

This is evidence of the very essence of that situation that when they seized this property without the slightest regard to the rights of anybody and it was brought to their attention formally before they were ever assigned to this Chemical Foundation, that they went straight on assigning to the Chemical Foundation and then told the man to look to the Chemical Foundation although he was an American citizen and the owner; and then when he went to the Chemical Foundation, he was told: "You take a license with us and pay us a royalty for the use of your own property."

Now, that is inconsistent with every statement in this Answer practically, and that series of facts, taken in connection with all the evidence we have produced here of this combination of the dye stuffs people who really organized this corporation and of whom it is merely an agency, to obtain these patents and to obtain control of the

industry, goes to support the idea of the conspiracy in which through a mistaken conception of his duty, as I see it, the Alien Property Custodian either joined or allowed himself to be used.

It goes to show such a disregard of property rights in charge of the Alien Property Custodian as in itself throws a serious question upon this whole transaction, assuming that other elements did not exist.

Now, your Honor has spoken of fraud. I say I dislike the "epithetic fraud," I suppose as much as anybody in the world, because we are all so disposed when we are getting into a case of this kind to use language which is not fair where people are not able to reply; and I do not want to. But I do say that the legal consequences of such things as I have outlined here, are the same, and that in one aspect of the case we are proving facts from which we can argue at least those legal consequences. And should it appear from the evidence when it is all in—I am not anticipating—I do not know what evidence these gentlemen will put in—and therefore I do not want to argue offensive conclusions at this time, but if it should appear that the facts presented lead as a reasonable conclusion even to any other fraud I shall not hesitate to argue it on the part of the Government.

I do not want to be understood here as waiving any claim of the Government, but merely as undertaking to conduct this case within the facts and with due regard to what I conceive to be the proprieties, when I can avoid those unpleasant expressions.

If I have made myself clear, then this evidence and instances of this character tend to confirm the conspiracy which we have charged, the

scheme which we have charged, and to show that it not only permeated the offices of the industry since the defendant here was an agency of and represented by the Dyes Institute, and that it permeated the office of the Alien Property Custodian. That with a mistaken conception of his duties and with enthusiasm perhaps for the interest of a certain industry which he regarded as essential at the expense of those who were the enemies of our country—not an unnatural feeling—he misconceived and violated his duties, and that these are evidences of the violation of his duties. Not only the facts of the whole case, but these are exaggerated instances of the utter disregard of his duties, which tends to show entire misconception; and further he seized indiscriminately patents engaged in American industry, being used by American industry and being employed, of great value, along with those of aliens; lumping them together, whether they were being used or not used, and selling them for what was obviously an arbitrary and nominal consideration. If that can be shown, then of course, we are proceeding upon a theory that such a transaction could not be sustained. At an appropriate time, I think, I can show to your Honor, that this could not be done. Have I answered your Honor's question? If I have not, I will try my best again. I am suffering from a headache this morning and I am afraid I am not clear.

THE COURT: My inquiry was prompted by this: That if you are going to stop when you show that one patent was seized which belonged to an American or an American industry, and was mistakenly seized under the Act, it seems to me that it was pinning a lot of faith on that one act.

MR. ANDERSON: Yes, I would think so, too.

THE COURT: Now then, it seemed to me the value or attention that should be given to this testimony would depend upon the number of instances. As I understand you, your reply is that you are pinning your faith not on the number of instances, but on this instance and certain other facts, namely, that the officers of the Alien Property Custodian's office, or some of them, or the officers of the Chemical Foundation, and the other instances you have named, and not on the number of instances of mistakes which might be unintentional.

MR. ANDERSON: Your Honor did not quite understand me. I said there were a large number of instances. I do not know whether your Honor caught the significance of my statement. I do not know how many, because I do not recall now, but among them was the Pacific Flush Tank Company.

MR. KRESEL: Wait a minute. That had nothing to do with this. The Pacific Flush Tank Company had nothing to do with the seizing of patents.

THE COURT: That need not be argued. I recall that very distinctly. I made a number of inquiries about the Pacific Flush Tank Company and one of the answers to that by your colleague, Mr. Galloway, one of the arguments was that it was evidence of your contention that all the facts had not been called to the President's attention. I did not mean to stop you on the Flush Tank. I recall it.

MR. KRESEL: That is all. I do not want to take any more time.

MR. ANDERSON: I want to say further. There appears and here is a list of abstract of reassignments by the Chemical Foundation, Incorporated.

MR. KRESEL: Will you put that in now? I do not believe that has been marked.

MR. ANDERSON: I think that is in.

MR. KRESEL: No, it is not in.

MR. ANDERSON: I will put it in as soon as I get through this witness's testimony.

MR. KRESEL: All right.

MR. ANDERSON: I thought it was in. That was one of the papers stipulated in the case, though.

THE COURT: I did not mean to interrupt you. Were you intending to direct your remarks solely to the Flush Tank or to this?

MR. KRESEL: I was going to speak on this, your Honor, but I do not want to interrupt Colonel Anderson. If he is to go on with this witness, I would like to finish him this morning.

THE COURT: All right.

Q. 24. I hand you a letter, dated March 26, 1919, Robert C. Golstein to the Chinosol Company in re Trust G 36983; you received that letter from Mr. Goldstein did you not?

MR. KRESEL: If your Honor please, I call attention to the fact that that letter is already in evidence. What is the use of asking the witness whether he received it?

MR. ANDERSONS Very good.

THE WITNESS: I did.

Q. 25. And you replied to it?

A. I did.

Q. 26. Without duplicating the record, I refer to the letter as Plaintiff's Exhibit already introduced, No. 185. Now, yesterday we introduced certain letters from Mr. Goldstein to yourself, dated October 14th, and a letter dated October 17th, from you to Mr. Goldstein, Plaintiff's Exhibits Nos. 187 and 188. I would ask you if you had any conference with the officers of the Chemical Foundation, Incorporated, about this

time, and if so, state as nearly as you can the date and who was present?

A. It was about June 13th, 1919, after the receipt——

MR. KRESEL: Just state who was present. That is the question.

A. Mr. McKay, the Vice President, and Mr. Ramsay Hoguet.

Q. 27. Did you learn at that conference that Mr. Hoguet was counsel for the Corporation?

MR. KRESEL: That is conceded. You do not have to prove that.

MR. ANDERSON: All right. I only wanted to know if he knew it.

Q. 28. State as far as you can the substance of what was stated to you by these officers of the Chemical Foundation, what took place in regard to this patent?

MR. KRESEL: Our objection, your Honor, is the same as to the correspondence, and I assume that your Honor's ruling will be the same.

THE COURT: Same ruling.

MR. ANDERSON: Let us have the question again, please. (Q. 28. repeated as recorded.)

A. They told me that.

MR. KRESEL: Who told you?

THE WITNESS: The two gentlemen present, I do not remember which one; both of them, that the Chemical Foundation has received an assignment of my patent 906,918, I think it is. I explained to them that the Alien Property Custodian had no right to transfer that patent to them; that it was my property, and I had so stated in a letter sent to the Alien Property Custodian by registered mail.

Q. 29. Which letter is one of those introduced here today?

A. Yes, sir, this one.

MR. KRESEL: Just give the date of it, please.

THE WITNESS: March 21, 1919. (Referring to Plaintiff's Exhibit No. 184.) We talked the matter over pretty thoroughly. They wanted to know whether they could come to any arrangement with me about the handling of my patent.

MR. KRESEL: I suggest, your Honor, that that be stricken out, and the witness be asked to give the conversation. He is giving now his conclusions.

THE WITNESS: I am trying to, sir.

THE COURT: Is this a conclusion or is this a statement of what occured?

MR. ANDERSON: I will ask him to give the statement of what occurred.

Q. 30 Give, as far as you can, what they said to you, or the substance of it. Of course, you can not remember the detail——not its effect, but I mean just follow the conversation as if you were accounting what took place?

A. Both gentlemen seemed to admit the accuracy of my statement.

MR. KRESEL: Stop there, please. I asked that be stricken out.

THE COURT: Will you not help? The witness is undoubtedly unfamiliar with legal procedure in this particular. Will you not make it clear to him as to what we want?

MR. ANDERSON: Yes, sir.

Q. 31 Mr. Parmele, remember you must only say, as far as you can remember, what they said. That is, if Mr. Hoguet or Mr. McKay said something to you, state in substance as far as you can state, what he said to you, and not the conclusion as to whether or not they admitted something?

A. Yes.

Q. 32. If they said "I admit that this is your right," then that is a statement; but your conclusion that they had admitted it, is not what they said. Do I make myself clear?

A. Either Mr. McKay or Mr. Hoguet asked whether I would join the Chemical Foundation. I said no. Then they wanted to know whether I would permit them to retain the patent and manufacture for us, we paying them a royalty. I replied that I could see no reason on earth why I should pay them a royalty on something that I owned.

Q. 33. Any further conversation, that you recall?

A. There were several conferences, and as a result of the conference either Mr. McKay or Mr. Hoguet promised that Mr. Hoguet would communicate with me and arrange for a definite time, when I could learn just what the Chemical Foundation would be willing to do.

Q. 34. Yes.

A. Not hearing from Mr. McKay or from Mr. Hoguet, I went to the office and I was told that Mr. Hoguet——

MR. KRESEL: One minute.

Q. 35. Told by whom?

A. Either by Mr. McKay or the other gentleman who was there in charge of the business of both of those gentlemen. I think he was the chemist.

Q. 36. Was his name Tucker?

A. I think it was Tucker. I may be mistaken, but it was some gentleman there in charge of the office of the Chemical Foundation, and I was told——

MR. KRESEL: When was this, please?

THE WITNESS: That was in June, 1919. Mr. Hoguet then did telephone to me, stating that I would hear from him on the 19th of June. I did not hear from him on the 19th, and did not hear from him on the 20th; so I then wrote to Mr. Hog-

uet on June 20th a letter, of which this is a copy. (Handing to counsel.)

MR. KRESEL: That is not in our stipulation, is it?

MR. GALLOWAY: No, that is not in the stipulation, Mr. Kresel.

MR. KRESEL: All right, I will not object to it.

MR. ANDERSON: We introduce in evidence copy of a letter dated June 20th, 1919, addressed to Mr. Hoguet, signed by the witness.

THE COURT: Admitted.

MR. ANDERSON: As Plaintiff's Exhibit No. 204.

Received in evidence and marked Plaintiff's Exhibit No. 204." *(See Exhibits, Vol. I, page 493.)*

MR. ANDERSON: The effect of this letter is to urge a prompt reply to the question of his patent and so on.

Q. 37. Proceed with your statement, Mr. Parmele, being careful when you make a statement to be sure you state by whom, and what was said, as distinguished from your own conclusion?

A. The next thing was letter dated June 21st, 1919, from the Chemical Foundation, signed S. A. Tucker, Chemist, and saying——just give me the letter, please.

THE COURT: Are you going to offer it?

MR. ANDERSON: Yes, sir.

THE COURT: Admitted under like conditions.

MR. ANDERSON: I offer in evidence original letter dated June 21st, 1919, to the Parmele Pharmacal Company, signed the Chemical Foundation, Incorporated, S. A. Tucker, Chemist. The subject is with respect to a request to call at the office.

Received in evidence and marked "Plaintiff's Exhibit No. 205." *(See Exhibits, Vol I, page 494).*

THE WITNESS: I then received a letter
June 23d, 1919, from Mr. Ramsey Hoguet.

MR. ANDERSON: Let me see it. (Handed
counsel.)

MR. ANDERSON: I offer in evidence origin
letter addressed to the witness, signed Ramse
Hoguet, dated June 23d, 1919, as Plaintiff's E
hibit No. 206.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff
Exhibit No. 206." *(See Exhibits, Vol. I, page 495.*

MR. ANDERSON: I will read it, of course, dis
claiming any intention to be discourteous, M
Hoguet says: (Reads Exhibit No. 206).

Q. 38. Go ahead, Mr. Parmele.

A. As a result I went to the office of the Chem
ical Foundation. I do not remember whether Mr. Mc
Kay and Mr. Hoguet were there together or whethe
there was only the one or only the other.

Q. 39. One or the other was there?

A. One or the other was there as I now remembe
it. Each referred me to the other, so I thought it wa
immaterial which one I was talking to. I discussed
this whole situation, told them that it was damaging
me seriously, that the report had gotten out in the
trade that I no longer controlled the product, dealers
were not sending their orders to me, my competitors
were spreading the news that it was no longer ob-
tainable and it was a serious damage. They agreed
to that and said they would see what they could do.
As a result, I received on August 21st or the next day
afterwards, August 22nd, this letter dated August 21st,
signed by Mr. Ramsay Hoguet or signed for him, and
I replied over the telephone first to Mr. McKay ver-
bally.

MR. ANDERSON. I offer in evidence letter dated
August 21, 1919, addressed to the witness signed

"Ramsay Hoguet," to be read as Plaintiff's Exhibit No. 207.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 207." *(See Exhibits, Vol. I, page 496.)*

MR. ANDERSON: The letter says (reading).

Q. 40. Have you that agreement?

A. I have not.

Q 41. What did you do with it?

A. I sent it back to them with this letter. Here is a copy of the letter. I sent it by messenger from my office.

MR. ANDERSON: I offer in evidence a copy of letter dated August 22, 1919, addressed to Ramsay Hoguet, Esq., signed Charles Roome Parmele, President, Chinosol Company, to be read as Plaintiff's Exhibit 208.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 208." *(See Exhibits, Vol. I, page 497.)*

MR. ANDERSON: The letter is as follows (reading).

Q. 42. What then took place, Mr. Parmele?

A. I then received a letter from Mr. Douglas I. McKay, Vice President, of which this is a copy. The original was sent to the Commissioner of Patents in Washington and he still has it.

MR. ANDERSON: I offer in evidence copy of letter dated August 25, 1919, from the Chemical Foundation, Incorporated, signed "Douglas I. McKay, Vice President," to the witness to be read as Plaintiff's Exhibit 209.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 209." *(See Exhibits, Vol. I, page 498.)*

MR. ANDERSON: The letter is simply this (reading).

Q. 43. Was there any further correspondence or conference about this matter with the officers of the Chemical Foundation?

A. I then received this copy of assignment of the patents. Before handing this assignment to me Mr. Hoguet said he wanted me to agree that I would waive any possible cause of damage against either the Chemical Foundation or the Alien Property Custodian. I was anxious to get my patents straightened out and went along the lines of least resistance and signed that, sir.

MR. KRESEL: I ask that the lines of least resistance be taken out of the answer.

THE COURT: Do you object?

MR. ANDERSON: Not at all. You do not object to this, do you? It is a discharge of all claims against the Chemical Foundation.

THE WITNESS: I acknowledged that letter in which they said they had no interest in Chinosol, with those copies (handing counsel).

Q. 44. You say you acknowledged the letter disclaiming interest by a letter of August 27, 1919?

A. Yes, sir.

MR. ANDERSON: I offer in evidence copy of letter of August 27, 1919, to Mr. Douglas I. McKay, signed by the Chinosol Company, by the witness, its President, as Plaintiff's Exhibit No. 210.

THE COURT: Admitted.

MR ANDERSON: I will not take the time to read it; it confirms what he says.

Receivd in evidence and marked "Plaintiff's Exhibit No. 210." *(See Exhibits, Vol. I, page 499.)*

MR. ANDERSON: The witness now produces and I offer in evidence a paper called "release and discharge," signed by the witness, which purports

to release and discharge the Chemical Foundation from any damages on account of this matter.

MR. MAHAFFY: What is the date of it?

MR. ANDERSON: Dated 29th day of November, 1922, after this suit.

MR. KRESEL: There must be some mistake about that

MR. ANDERSON: No, that is right.

THE WITNESS: Maybe that is the trade-mark, sir. Just a moment and I will see. That is the trade-mark.

MR. ANDERSON: I know that was the date of one of them. Then I will not have that marked yet.

THE WITNESS: Let me see just what that is (taking paper). These unfortunately both relate to trade-marks, sir. I thought one referred to the assignment of the patent.

Q. 44. Did you in fact execute any paper to the Chemical Foundation at the time they gave you that disclaimer of any interest?

A. Shortly subsequent thereto, yes.

Q. 45. Did that paper purport to release the Chemical Foundation from all claims for damages?

A. Yes, sir; also the Alien Property Custodian.

Q. 46. Mr. Parmele, did you have a trade-mark covering this same product Chinosol? If you did, please produce your evidence of the ownership of that trade-mark?

A. I haven't it here.

Q. 47. You will send it to us to be presented, will you?

A. I will.

Q. 48. What was the name of that trade-mark?

A. Chinosol.

Q. 49. What is the number?

A. I do not remember the number of the trade-mark. I think I can tell you.

Q. 50. That shows on your original evidence of it?

A. Yes, sir.

Q. 51. It appears on the list stipulated by counsel, which will be later introduced as trade-mark No. 28,750?

A. Correct.

Q. 52. In the list stipulated as one of the reasons assigned is that the Chinosol Company was the owner of the trade-mark at the time of seizure. Had you acquired this trademark prior to the war with Germany?

A. Yes, sir.

Q. 53. When did you discover that this trade-mark had been seized or attempted to be seized by the Alien Property Custodian?

A. Not until the matter came up in a suit of mine in the Federal Court.

MR. KRESEL: Just the date, please?

A. (Continuing) I can't tell you, sir.

MR. KRESEL: That answers the question.

A. (Continuing) It was early last fall or late last spring.

Q. 54. It was during the summer or early fall of 1922 then?

A. Yes, sir.

Q. 55. What did you then do about it?

A. My attorney, Mr. Prindle, aided me in securing an assignment from the Chemical Foundation of their interest in the Chinosol trade-mark.

Q. 56. You had been using this trade-mark right along, had you not?

A. Yes, sir.

Q. 57. And you never knew it had been seized or that anybody claimed title to it other than yourself until the time that you indicated, late in 1922?

A. Yes, sir.

Q. 58. State what further transactions you had

in connection with it, if any, with the Chemical Foundation, and if you state conversations, state the time and place and with whom?

A. I do not remember the officer with whom I had the conversation, but someone at the office of the Chemical Foundation; and as a result, they sent me an assignment of their assignment of the Chinosol trade-mark.

MR. ANDERSON: That is in the stipulation. I do not want to put it in evidence, unless you wish.

MR. KRESEL: I do not care anything about it.

Q. 59. Did you at that time execute also a release of all claims for damages against the Chemical Foundation and the Alien Property Custodian?

A. Yes, sir.

Q. 60. Mr. Parmele, how much did you expend in advertising this trade-mark?

MR. KRESEL: I object to that as being immaterial and irrelevant.

THE COURT: What is the purpose of it?

MR. ANDERSON: I am going to ask him what he spent and will later follow it up with evidence of the value of the trade-mark. I think what he had expended in developing the trade-mark is one of the evidences of value. It is not conclusive, but it is one of the evidences of value.

THE COURT: Have you any authority to support that contention?

MR. ANDERSON: I have not an authority here, if your Honor please. I have authorities in abundance to the effect that in arriving at the value of patents, trade-marks and so forth, the evidence will be admitted on two lines, among others. One is as to the advantage of having the trade-mark or patent over and above the advantages that one would have without the trademark or patent. Among other elements entering into that advan-

tage are the expenditures which have been made in developing it up to the point to which you have developed it, since in a trademark, its familiarity to the public is the sole, practically the sole basis of its value. Then in addition to that, that any person who is familiar with the circumstances, although not an expert, can testify as to the value of that trademark or patent in his opinion, subject to a test of his knowledge by cross-examination. I am going to follow this and with proof of the advantage to be gained if he spent $100,000 or $500,000 advertising this trademark, and that he had a business under it which was earning a good return on that expenditure, and that that was an advantage which he would not have had to forego if he had not done that advertising and developing of that trademark. It is not a conclusion. It is one of the factors in arriving at this elusive thing which we call value.

THE COURT: Then you regard the value of this trade-mark, notwithstanding the fact that it was assigned as part of or one of a great number, as one of the issuable facts in this case?

MR. ANDERSON: Absolutely so, sir; because that is one of the things assigned to the Chemical Foundation for $250,000.

THE COURT: Which was not worth anything to the Chemical Foundation Company?

MR. ANDERSON: They did not have any title to it. Naturally it was not worth anything to them. In other words, as going to show the validity and the character of this transaction, if they had assigned to the Chemical Foundation or undertaken to assign some of my property worth $10,000,000, if I ever had that much, even if they could not give good title to it, it would show an utter disregard of the question of value. The fact that

the Chemical Foundation did not get any value and had to return it does not in any way affect the value of the evidence showing an utter disregard of value manifested by the trustee when he sold this property. That is very strong evidence not only that it was inadequate, but an utter disregard, a perfectly arbitrary disregard of that feature.

MR. KRESEL: I think, your Honor, we have gone a little astray. The particular question asks that the witness state how much money he had spent in advertising. We object to that as immaterial and irrelevant upon all issues, even on the question of value. The amount that this gentleman may think he spent in advertising in my view can have no legitimate bearing upon the question of the value of the property. He may have spent a million dollars and yet it may not have been worth ten cents after he spent that million dollars.

MR. ANDERSON: I will ask him, if you want, how much he spent in the development of this trade-mark.

THE COURT: That is your question in another form.

MR. ANDERSON: It is the same question.

THE COURT: I do not follow the reasoning by which that can aid in a conclusion of value. Consequently, I think the objection is sound, but you may put the evidence in, and I will overrule the objection.

MR. KRESEL: What is the question—what he spent in advertising or developing it?

MR. ANDERSON: I will put it both ways—advertising and developing this patent and trade-mark.

A. Advertising and developing?

Q. 61. Yes.

A. Over $100,000.

Q. 62. Mr. Parmele, how long have you been in this chemical business?

A Thirty years.

Q. 63. Thirty years as a chemical manufacturer. I will ask, how long do you say you have been using this patent, since 1911?

A. 1911.

Q. 64. What in your opinion would have been the fair value of this patent and the accompanying trade-mark at the time that they were attempted to be seized and assigned to the Chemical Foundation?

MR. KRESEL: We object to that upon the ground that the witness has not been qualified as an expert to give any testimony upon value; that no proper foundation has been laid for the admissibility of such testimony; that no facts have been adduced upon which this witness, even if he were an expert, could base an opinion. It is therefore immaterial, irrelevant and inadmissible.

MR. ANDERSON: I do not want to argue that, if your Honor please.

THE COURT: You will have to establish its validity for me, because it seems to me it is not admissible now. I am perfectly willing to have it in the record, but I do not understand the theory on which this question is asked. You may, however, take the answer.

MR. ANDERSON: Go ahead and answer, Mr. Parmele.

A. Over $100,000.

Q. 65. Did the business which you did under this patent and trade-mark in 1919 yield you a return of over $100,000.

MR. KRESEL: I object to that upon the grounds,

first, that it is leading; second, that even if it were the fact, it would be no proof of the value of the trade-mark or the patent unless there was proof that the return was the result of the trade-mark or the patent.

THE COURT: If sold.

MR. KRESEL: If sold.

THE COURT: I think the objection is sound.

MR. ANDERSON: All right. I cannot ask it all at once. I am going to follow that with the question as to whether it was the result, and whether he could have earned any of this if he had not owned this patent and trade-mark. But I cannot ask all these questions at once, sir. Did your Honor say he may answer?

THE COURT: No, I was just wishing that patent cases were so determined and accounting cases were so determined. You are familiar with the Westinghouse and other cases?

MR. ANDERSON: Yes, sir, I am familiar with them, and I think that this case, if your Honor please, bears a very much stronger relation to a condemnation proceeding than it does to an ordinary infringement case.

THE COURT: But you are getting value.

MR. ANDERSON: I am getting value, and in a condemnation proceeding I am entitled to ask a witness, even though not an expert, as to the value of lands in the neighborhood, or if he lives in that neighborhood and is reasonably familiar with their use and employment. The Court or Commissioners must say what would be the weight of that testimony. Of course, nothing is so difficult to prove as values, to the satisfaction of everybody, because no two men agree on them. But this is evidence, as I see it, which is in the particular circumstances of this case about the best

evidence that is available on this subject, otherwise I would not offer it. The witness does not have to qualify as an expert to give this evidence. I am not dealing with an infringement suit at all; I am dealing with the question what this thing was worth to the man at the time it was taken away from him.

MR. KRESEL: Inasmuch as counsel has indicated what he thinks his witness has testified about it, I object. Counsel now states he wants the witness to say what it was worth to him. The Court is not concerned with that. If it is a question at all, the question is what was the value, not what was the value to this witness.

MR. ANDERSON: I asked the question that way. I asked what was the fair value of that patent and trademark at the time they were seized and transferred to the Chemical Foundation.

MR. KRESEL: We also object on the ground the question is improper in that it does not seek to elicit the fair market value of the property.

MR. ANDERSON: All right, I will put it both ways rather than discuss it.

Q. 66. What was the fair market value of this patent and trade-mark at that time?

MR. KRESEL: The same objection, your Honor, upon the grounds I have heretofore urged.

THE COURT: The same ruling.

A. Shall I answer?

Q. 67. Yes, sir.

A. I was offered $50,000 for a half interest in it, and declined it.

MR. KRESEL: I ask that that be stricken out as not responsive.

MR. ANDERSON: All right, I will just strike out the answer, and I will ask this:

Q. 68. What was your opinion of the fair market value at the time this alleged transfer took place?

A. Over $100,000.

Q 69. Now I will ask you if you have any bona fide offer for the patent and trade-mark, or any interest therein?

MR. KRESEL: I object to that as calling for the conclusion of the witness, as immaterial and irrelevant.

MR. ANDERSON: Just to save time and get through with it, I will take the answer under Rule 46, if your Honor will allow it.

THE COURT: You need not take any of the testimony under Rule 46, you may take the testimony under our general rule which has been applied to all this evidence. Incidentally, Colonel Anderson, this general rule does not apply to your rebuttal; this rule applies to your evidence now.

MR. ANDERSON: I understand that.

THE COURT: And any rebuttal will be restricted absolutely to rebuttal.

MR. ANDERSON: Of course, I will not be able to go far afield in rebuttal; I must confine myself to the rebuttal, of course.

THE COURT: I happened to think of that just now and I did not want you to be misled. I will take the answer.

A. What is the question?

Q. 70. Have you had any offer for any interest in this patent or trademark?

MR. KRESEL: No, the question was have you had a bona fide offer.

Q. 71. I will leave out "bona fide" and ask have you had any offer?

A. Yes.

MR. KRESEL: One minute, please. All right, he has already answered.

Q. 72. About when?

A. Four years ago.

Q. 73. For what interest?

A. A half interest.

Q. 74. In what?

A. The Chinosol business.

MR. KRESEL: One minute.

MR. ANDERSON: I am coming to it. I know your objection. I will correct it.

MR. KRESELS I now ask that the last four or five questions and answers given by the witness thereto, with reference to an alleged offer, be stricken out on the ground that it now appears that it did not relate to the patent or the trade-mark.

MR. ANDERSON: I am coming to that question; and unless I make it appear that it does, of course it will be stricken out, because I am talking about the patent and trade-mark.

Q. 75. I will ask you to state whether or not the business of the Chinosol Company is dependent upon this patent and trade-mark.

MR. KRESEL: I object to that upon the ground that it calls for this witness's conclusion, immaterial and irrelevant.

MR. ANDERSON: He conducts the business. He ought to know.

THE COURT: The question can not help me, can not help anybody. Of that I have no doubt.

MR. ANDERSON: If your Honor please, if the Chinosol business yields a revenue and the sale of its article is dependent entirely upon this patent and trade-mark, and you could not conduct the business without it, this is admissible.

THE COURT: You are asking for his opinion indirectly.

Q. 76. Then I will ask you this: Do you conduct

any other business for the Chinosol Company except under this patent and trade-mark?

A. No.

MR. KRESEL: One minute, please, I ask that the answer be stricken out to give me a chance to object to the question. I object to it again upon the ground that it calls for this witness's conclusion, that it is immaterial and irrelevant and calls upon him to construe the patent and the trademark so as to determine whether he is conducting business thereunder. That is not only a conclusion of fact but also a conclusion of law.

THE COURT: And also goes to the question of validity of the patent. The patent may or may not be valid.

MR. ANDERSON: The presumption of validity applies when you prove the patent.

MR. KRESEL: But when you are asking him to say whether he is conducting his business under that patent or operating under it, don't you see that if his patent is invalid, he is not operating under it and he has no patent?

MR. ANDERSON: All right. If you prove it to be invalid, we will agree to that.

MR. KRESEL: Not at all. The burden is not upon me to prove it invalid.

THE COURT: You can put the answer in the record. I do not think that the testimony will have any value. I do not see how it can, Colonel Anderson. I am stating that so that you will not be taken by surprise if I reach the conclusion eventually that it has not.

MR. ANDERSON: I recognize your Honor's position. I have got this witness here and I will put the evidence in the record and argue the question of its value later with your Honor's permission.

Q. 77. Was all of the product of the Chinosol

Company sold under the trademark "Chinosol" which you have referred?

A. Yes.

By Mr. Kresel:

Q. 78. During what period is this?

A. Ever since we had it.

By Mr. Anderson:

Q. 79. Ever since you had the patent and trad mark?

A. It is not known under any other name.

Q. 80. And Chinosol is manufactured under t process described in the Chinosol patent, is it; I me the stuff is manufactured?

Mr. Kresel: I object to that as immateri and irrelevant. We have not the patent before u

Mr. Anderson: I have told you I will produ the patent.

Mr. Kresel: One minute. We do not kno anything about the process. There is no wa that I have by which to test the gentleman's te timony here; and I do not think we can be boun by it, Colonel, as to what his conclusion is as whether he is operating under this patent.

Mr. Anderson: I do not expect you to b bound by it, but I will introduce it for what it worth. If I had the patent, I would give it t you. I am going to introduce the patent. The if you wish to recall this gentleman for cross-ex amination with the patent before you, I will ca him back.

Mr. Kresel: I am simply putting my objec tion on the record as I have to.

A. It is.

Q. 81. Based upon that experience, you regar this patent and trade-mark as worth in excess of $100 000 at the time of the transfer?

A. The patent and the trade-mark?

Q. 82. Yes.

A. Yes, sir.

MR. KRESEL: Don't you think you had better ask him how much over $100,000? Perhaps we ought to know that.

Q. 83. How much over $100,000?

A. I should say $150,000.

Q. 84. What would you regard the patent as worth alone?

A. The patent alone?

Q. 85. Yes.

A. That is problematical. The trade-mark is the valuable thing now because the patent is running to a conclusion.

Q. 86. But the trademark is the valuable part of it today?

A. Yes, sir.

MR. ANDERSON: That is all.

THE COURT: Do you want to cross-examine the witness now?

MR. KRESEL: If your Honor please, if it is agreeable to your Honor, I should prefer not to do so now. I have been contemplating taking a train out of here at 1:36.

THE COURT: I was going to indicate my intention of stopping now, but I wanted to know whether you were going to defer your cross-examination so that the witness would be notified to come back.

MR. KRESEL: When are we going to resume?

MR. ANDERSON: I am afraid I will have to ask the Court to adjourn over to Thursday.

THE COURT: This case will be resumed Thursday morning next, 8:30 Standard time.

(Whereupon, at 12:30 o'clock P. M., adjournment was taken until Thursday, June 21, 1923, at 8:30 o'clock A. M., Standard time.)

ELEVENTH DAY.

Wilmington, Delaware,
June 21st, 1923, at 8:30 o'clock A. M.
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Upon motion of Herman J. Galloway, Esq., of counsel for Plaintiff, William G. Mahaffy, Esq., of counsel for Defendant consenting in this behalf, the trial of the above case was adjourned until tomorrow at 8:30 o'clock in the forenoon, Eastern Standard Time.

TWELFTH DAY.

Wilmington, Delaware,
June 22nd, 1923, at 8:30 o'clock A. M.,
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel Present as before noted.

TRIAL RESUMED BEFORE THE COURT.

CHARLES ROOME PARMELE resumes the stand:

DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

Q. 87. Mr. Parmele, you are the same Charles R. Parmele who was on the stand last Friday, a week ago today, are you not?

A. I am.

Q. 88. At that time you were asked to produce the

original or copy of the United States Patent No. 906,918, as to which you testified. Will you please produce that patent, a copy of it?

A. That is it, sir. (Handing counsel).

Q. 89. This is a printed copy of the patent as originally issued to Leopold Ostermann, which you get from the Patent Office of the United States, is it?

A. It is.

MR. ANDERSON: We offer in evidence the United States Patent No. 906,918, identified by the witness, patented December 15, 1908, the copy being offered under the stipulation in lieu of a certified copy.

MR. KRESEL: The defendant objects, if your honor please, upon the grounds heretofore urged to this entire testimony.

THE COURT: Admitted under the same conditions as the prior exhibits.

Received as evidence and marked "Plaintiff's Exhibit No. 211." *(See Patent Exhibit Book.)*

MR. ANDERSON: That can be identified and read as "Plaintiff's Exhibit No. 211."

Q. 90. You were asked also to produce the original or a copy of the trade-mark Chinosol, registered with the Patent Office, as to which you testified, the number being, as identified by you in your former testimony 28750.

A. Yes, sir.

MR. ANDERSON: The witness has produced and we now offer in evidence printed registration of United States Patent Office, of the trade-mark Chinosol, number 28750, registered August 11, 1896.

MR. KRESEL: Same objection.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 212." *(See Exhibits, Vol. I, page 501.)*

Q. 91. You were requested to produce original or certified copy of the assignment of this patent and trade-mark already identified and introduced, to you, which assignment you testified took place in 1911. Have you the original or a certified copy of that paper?

A. That is a correct copy, sir (handing paper to counsel).

MR. ANDERSON: Plaintiff offers in evidence certified copy of instrument dated 3rd day of April, 1911, signed "Franz Fritzche" by "Franz Fritzsche seal" and by "Dr. L. Ostermann," together with the certificate of registration of the Patent Office thereon, to be identified and read in evidence as "Plaintiff's Exhibit No. 213."

THE COURT: Is the authenticity of this document admitted?

MR. KRESEL: We do not question it, your Honor.

THE COURT: Admitted under like conditions as preceding exhibits.

Received in evidence and marked "Plaintiff's Exhibit No. 213." *(See Exhibits, Vol. I, page 504.)*

Q. 92. I note that in the certified copy of the assignment of the patent and trademark to you last introduced, there is reference made to an agreement between the persons named as assignors and the Chinosol Company, dated June 1, 1908. Have you that agreement or a copy thereof?

A. I searched for it, and I cannot find it. I am afraid it is lost. We had a fire in our establishment a few years ago and a great many documents were ruined. My letter books were destroyed. My letter files were destroyed, a great many of them. I do not know where that document is and can not find it.

Q. 93. You have made a careful search for the agreement there mentioned and you can not locate it anywhere?

A. I have.

Q. 94. Do you know whether that agreement was ever recorded in the Patent Office in 1908?

A. I think it was.

MR. ANDERSON: We will have a search made, gentlemen. If we can find it, we will produce it.

MR. HERSCHKOFF: I do not think it was recorded, Colonel.

Q. 95. You have no record in your possession of its record in the Patent Office, or any copy of the agreement or anything of that sort, have you?

A No, sir.

Q. 96. Now that the copy of your patent, No. 906,918, with the assignment to you has been introduced, I would ask you what you manufactured under that patent, and what you did under that patent in the manufacture?

MR. KRESEL: When, please?

Q. 96. (Continued) Between 1911, the date of the assignment, and the date of the seizure in 1919, and at the time of the seizure in 1919?

A. In 1918 and in 1919—

Q. 97. Yes.

A. I manufactured dioxychinolin and sulphide under that patent.

Q. 98. Then, proceed to tell us exactly what you did?

A. I purchased oxychinolin and purchased alcohol. I purchased sulphuric acid, and turned them over to my chemist, with instructions to strictly follow the process as outlined in that patent.

MR. KRESEL: I ask that the instructions to his chemist be stricken out.

MR. ANDERSON: I think that is admissible.

MR. KRESEL: I ask that be stricken out as hearsay.

MR. ANDERSON: A manufacturer personally

can not manufacture everything. We will find out exactly what he did, and we will argue to the Court whether that is in conformity with the patent.

THE COURT: I think the objection is well taken, Colonel Anderson, on the ground that the chemist would be the one who would be able to say what happened or what was done, and not his instructions to the chemist. Mr. Parmele apparently was not the superintendent or manager of that branch, and the best evidence, I think, would come from the person who was familiar with that; but under the general rule the testimony would be allowed to remain.

Q. 99. Now, did you observe the work which you have described, going on?

A. I did.

Q. 100. Are you able to say whether the method which you have described was followed?

A. I should say that it was.

Q. 101. Did you have the product so produced as you have described, analyzed, after its production?

A. I did.

Q. 102. What was the result?

MR. KRESEL: Wait a minute. I object to that, as calling for the witness's conclusion. It does not indicate that he has any personal knowledge of it. The question is indefinite.

THE COURT: This witness did not make the analysis, did he?

MR. ANDERSON: I asked him if he had it analyzed. I suppose, in the amount he turned out, he could not make it all himself, sir; therefore, I asked him what was the result; if he had it analyzed, what was the result?

THE COURT: I do not think the question is admissible. You may take the answer, but I do not

think his testimony will disclose the nature of the thing.

MR. ANDERSON: I venture to suggest, if your Honor please, that if a man is conducting a business, the results as reported to him in his business, such as done under his direction, would be evidence. It might not be conclusive evidence on the subject, but it would be evidence on the subject because it is in the course of his business; just like an accountant keeping a lot of accountants working under his direction, and he is prepared to say that those accounts are correct although he did not make the actual entries. He can do that; because it might take years to bring every ac countant that makes an entry on the books under consideration; and the same thing here.

THE COURT: You might take the answer.

MR. ANDERSON: I will just take the answer and go ahead. What was the result?

A. I took each batch to the Pease Laboratories, Dr. Pease himself, asked him to examine them and ll me whether they were di-oxychinolin sulfate.

MR. KRESEL: One minute, please. We object to this, if your Honor please. We do not understand the purpose of this testimony. There is not anybody here challenging this patent. The defendant is not challenging this patent. There is no claim made by anybody that something that this gentleman manufactured was not according to the patent. Why should we now go into an inquiry as to whether what was produced was what this gentleman says or was not what this gentleman says? I would like to know.

MR. ANDERSON: I would be very glad to answer that. I think myself that for the purpose of this case the general statements testified to on last Friday were sufficient to show that this man owned

this patent and was going ahead. All that testimony was objected to, and therefore it becomes necessary for me to go back and go through the detailed proof, which I did not think was desirable or necessary, in order to show his ownership of this patent, to show that he acted under this patent and that he regarded it as worth the money which has been testified.

MR. KRESEL: The ownership of the patent is not going to be decided by the result of a chemical analysis of what he manufactured. I do not see that that is material at all.

MR. ANDERSON: We do not want to go into the details if Mr. Kresel admits this.

MR. KRESEL: Very well, let us stop on this line.

MR. ANDERSON: On your statement, I am perfectly willing to stop right where I am.

Q. 103. Mr. Parmele, with the original evidence of these patents on the record I will again ask you what in your opinion was the value of this patent and trade-mark both of which were assigned to you together, when it was seized and assigned to the Chemical Foundation as testified by you on last Friday?

MR. KRESEL: We object to that, first upon the ground that the witness has already testified on the subject, and unless he desires now to change his testimony in that respect, he ought not again to be asked the same question. Furthermore, we object upon the grounds that we urged heretofore, to his testifying as to value, upon the ground that no proper foundation has been laid for the giving of such testimony, that it is patent that what this witness is telling about is what he thinks it is worth to him, not what the market value of the patent and trade-mark were, and therefore such testimony is incompetent.

MR. ANDERSON: He had not answered, and

therefore I don't know whether he is. I asked him what he regarded as the fair value of this patent.

MR. KRESEL: He did answer that last Friday; why ask him the same thing?

MR. ANDERSON: We will save time, I think, by getting it now. I want to put that in after this original evidence is in the record.

THE COURT: His answer to that question as the record now stands will not be of any service to me. You may put the question if you want to, but it will not elicit any information that will be of any service to me in reaching a conclusion as to the value of this patent. You may put it in the record if you desire.

Q. 103. (Continuing) Answer the question, please.

A. Over a hundred thousand dollars. I was offered—

MR. KRESEL: I object to that. He has answered the question now.

THE COURT: Objection sustained. We have had his testimony with respect to the offer and it is not necessary to repeat that.

MR. ANDERSON: Yes. I wanted to be sure that we have covered all those objections.

Q. 104. Under what trademark did you sell the product as to which you have testified?

A. Chinosol.

Q. 105. You sold it under the mark which has been identified here?

A. Yes, sir.

Q. 106. That trade name "Chinosol" is applied to this particular product that you have described as manufactured by you?

A. It is.

Q. 107. What do you regard that trademark as worth?

MR. KRESEL: I object to that upon the ground

that the question has already been asked and answered and upon the further ground that no foundation has been laid for this testimony and that it is incompetent, irrelevant and immaterial.

THE COURT: I think the objection is well taken on both points, but you may put his answer in.

Q. 107. (continuing) Go ahead.

A. Over a hundred thousand dollars.

Q. 108. How much have you expended in the development of that trademark?

MR. KRESEL: I object to that upon the ground that that question was asked at the last hearing; and upon my objection, your Honor indicated that it was an improper question and counsel withdrew it. I again urge the objection that it is incompetent, immaterial and irrelevant.

THE COURT: I think the objection is well taken on both points.

MR. ANDERSON: Your Honor will permit the answer?

THE COURT: Oh, yes.

Q. 108. (continuing). Answer the question?

A. Over a hundred thousand dollars.

Q. 109. You have actually expended that amount in the development of this trademark, have you?

A. Yes, sir.

MR. ANDERSON: That is all.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 110. Mr. Parmele, do you know when this patent was issued by the United States Patent Office?

MR. ANDERSON: If you Honor please, I think the best evidence of that is the patent itself and it has been introduced at the request of counsel. I do not think even on cross-examination he can

ask him as to a matter that is a matter of record, and which can be proved only by the record.

MR. KRESEL: Upon cross-examination, your Honor, I have a right to test not only the credibility but the recollection of this witness. He has undertaken to give testimony of value.

THE COURT: I assume Colonel Anderson the question is not intended to obtain the date of issuance of this patent, but it is simply an introduction to some other question which he shall ask the witness.

MR. KRESEL: Yes, your Honor.

XQ. 110. (continuing). Will you answer, Mr. Parmele?

A. What is the question again, sir?

XQ. 111. When the patent was issued.

THE COURT: If he knows.

A. I do not know.

XQ. 112. Do you know how long your patent had to run in April, 1919?

A. The patent expires in 1925.

X.Q 113. Then in 1919 it had how many years still to run?

A. Six.

XQ. 114. You were not the inventor of this process which is patented?

A. No.

XQ. 115. You got your rights by assignment from the inventors?

A. Yes.

XQ. 116. And that assignment is what you produced this morning and is now marked Plaintiff's Exhibit No. 213?

A. Yes.

XQ. 117. You have been asked to produce an agreement which is mentioned in this assignment as the agreement between Messrs. Fritzsche and Oster-

mann and the Chinosol Company which was dated June 1, 1908, and you tell us that you can not find it. That is right, is it not?

A. Correct.

XQ. 118. You were with the Chinosol Company in June, 1908?

A. Yes.

XQ. 119. And you were instrumental in having that agreement of June 1st, 1908 made?

A. Yes.

XQ. 120. I read to you from the assignment Plaintiff's Exhibit No. 213, the following:

That assignment is "to be held and enjoyed by the said Chinosol Company of New York for its own use and behoof and for the use and behoof of its successor and legal representatives to the full end and term for which the said Letters Patent are granted."

That you understand, do you not?

A. Yes.

XQ. 121. "And the said trademark or trade name may be enjoyed, as fully and entirely as the same would have been held or enjoyed by them if this assignment and sale had not been made, and for so long a time as the above mentioned agreement of June 1, 1908, shall be in force and valid."

A. Yes, sir.

XQ. 122. You understand that, did you not?

A. Perfectly.

XQ. 123. In other words, that your rights to this trademark and to this patent were dependent upon the agreement of June 1st, 1908, remaining in full force and effect?

A. Yes, sir.

XQ. 124. Then I read to you the following: "It being understood that this assignment shall be nil and void in the event of a breach of the contract by the

parties thereto of the second part" (that is, the Chinosol Company), "the assignees in this present assignment, and that this assignment of trademark and patent shall become completely nil and void either by breach or abandonment of the said agreement of June 1st, 1908, by the parties thereto of the second part."

A. Yes, sir.

XQ. 125. You are sufficiently familiar with language and legal documents to realize that by the terms of this assignment, your rights in the trademark and the patent were dependent upon the observation of the terms of the agreement of June 1st, 1908?

A. Which were all lived up to.

XQ. 126. Wait a minute. Yes or no?

A. Yes.

XQ. 127. Don't you volunteer anything to me, please. That agreement you have not produced?

A. No.

XQ. 128. You first learned of the seizure of the patent by the Alien Property Custodian, I think you testified, in June, 1919, was it?

A. About that time.

XQ. 129. Didn't the Alien Property Custodian send you the demand by which the seizure of the patent was made?

A. I submitted the letter received from the Alien Property Custodian when I was here last week.

XQ. 130. With the demand?

A. Yes.

XQ. 131. The demand came to you?

A. Yes.

XQ. 132. And you remember, you returned it?

A. I did.

XQ. 133. To the Alien Property Custodian?

A. Yes.

XQ. 134. Did you read that demand before you returned it?

A. I did.

XQ. 135. I show you Plaintiff's Exhibit No. 20
A. That is the demand, isn't it?

A. Isn't the original here, sir?

XQ. 136. That is the original. That is what w
produced by counsel for the Government. Perhaps th
will aid you. Here is Exhibit No. 203 which was t
letter with which that demand came to you. Do y
see it?

A. Just let me read this, please. (Reading) Th
is it, sir.

XQ. 137. I now read to you from this documer
Plaintiff's Exhibit 203-A as follows:

"I, A. Mitchell Palmer, Alien Property Cus
todian, duly appointed, qualified, and acting unde
the provisions of the Act of Congress," and so or
"under and by virtue of the authority vested in m
as Alien Property Custodian, after investigatio
do determine that Leopold Ostermann, Hamburg
Germany, is an enemy not holding a licens
granted by the President; * * * * and I do further
after investigation, determine that certain Letters
of the United States, identified as follows: Pat-
ents No. 906,918, date of issue December 15,
1908—"

That is the patent you are talking about, is it not?

A. It is.

XQ. 138. That is the one you claim is yours?

A. Yes, Sir.

XQ. 139. "And every right, title and interest with
respect thereto, including all damages and profits re-
coverable at law and equity from any person, firm or
corporation or government, for past infringement
thereof, subject to the rights of Chinosol Company,
New York, N. Y., belongs to, or is held for, or on ac-
count of, or on behalf of, or for the benefit of said
enemy, Leopold Ostermann."

Don't you see what the Alien Property Custodian demanded from you was whatever right Leopold Ostermann had and that it was subject to whatever rights the Chinosol Company had?

MR. ANDERSON: One moment; if your Honor please, I object. That is a pure question of law for your Honor to determine on argument. The construction of the written instrument is a question of law for your Honor to determine on argument here if at all, and certainly this witness is not qualified to answer the question.

MR. KRESEL: I asked him whether he read it and I want to know what he understood by it.

MR. ANDERSON: That is not the question. You asked him whether he did not know the meaning of that instrument.

THE COURT: May I ask you now, Colonel Anderson, what your contention is with respect to the construction. of that instrument.

MR. ANDERSON: For the present, I prefer not to answer, because I have not examined the instrument very carefully.

MR. KRESEL: Colonel, do you not see that all that the Alien Property Custodian seized is what the Germans had, and it is expressly subject to the rights of the Chinosol Company?

MR. ANDERSON: All right; we will argue that when we come to argue finally.

THE COURT: Either that is your contention, Colonel Anderson, or necessarily will be, and you necessarily have considered it, and if your contention is different from what Mr. Kresel indicated—unless your contention is different from what the reading of this indicates, I do not see the purpose of Mr. Parmele's testimony in that particular; but I do not see how the seizure with respect to this patent, not of the patent, but with respect to

the seizure of the German interest, if any, in thi patent, indicates any overstepping, any fraud o any neglect or any carelessness on the part of th Alien Property Custodian.

MR. ANDERSON: Now, if your Honor please, i the first place, a construction of that instrumen must be taken, all of it, altogether, and the cor respondence thereupon, introduced in evidence here. In the second place, even if Mr. Kresel's construction of the instrument were correct, which we do not concede, and I would make that very clear, and which is a question of law for the Court and not for the witness—that is my particular objection, and that is what my objection goes to. The subsequent dealing with this situation is, in my judgment, a very material fact in connection with this case taken in connection with other cases of similar character, some of which have been introduced, and others of which will be introduced; and show the course of dealing in this particular incident. You can not go through 4500 patents and prove them, but we can prove a good many of them and that, in my judgment will become a matter for argument in this case and on the argument of this case will be a very material question of dealing with the other larger issues involved.

I do not want to go into this this morning, unless it is necessary. In so far as that instrument is concerned, what it may or may not mean may come up for discussion, but I frankly do not think that its construction—

THE COURT: It is not open to construction by this witness, that is a burden which is mine.

MR. ANDERSON: I reckon so. That is all I contend for.

THE COURT: If Mr. Kresel's question is an ultimate question and not one by way of induce-

ment, then your objection is undoubtedly well taken.

MR. ANDERSON: Would your Honor have the question read? Could it be anything but a conclusive question?

MR. KRESEL: I desire to be heard on that before the Court rules on it.

MR. ANDERSON: I would just like the Court to have the question read before you are heard, so we can get it clearly before us. I understood it to be a clear-cut construction of the instrument.

(The stenographer then read XQ. 139 as recorded above.)

MR. ANDERSON: Isn't that a clear construction of the instrument?

THE COURT: It is what?

MR. ANDERSON: Doesn't that call for a construction of the instrument? I do not ask your Honor to answer that question, but I just say that as argumentative.

MR. KRESEL: All I ask is whether he did not see that in the demand which he had before him. That is all I ask him. I am not asking him to construe it.

MR. ANDERSON: He said he read the demand.

THE COURT: Is it your purpose, Mr. Kresel, to follow that up with another question, using his answer as a basis for it?

MR. KRESEL: As a basis, yes, your Honor. It is mere inducement; I am not trying to get him to construe it.

THE COURT: That is only a question as to whether he did not see that, as I understand it. If this is an ultimate question of construction, then your object is not open to debate, it is clear and sound.

MR. ANDERSON: Certainly.

THE COURT: But if it is by way of inducement then I think the question may be put. It may be defective in form as it now stands. Will you read that again.

MR. ANDERSON: Your Honor will permit me to note an exception.

THE COURT: Yes. Will you read the question as amended, please, Mr. Stenographer?

MR. KRESEL: Shall I put it again, your Honor?

THE COURT: Yes.

MR. KRESEL: It takes too much time to go back.

THE COURT: All right.

XQ. 140. Mr. Parmele, all I am trying to get from you is whether you did not see when you read this demand the portion that I read to you, wherein the Alien Property Custodian says that he seizes this patent subject to the rights of the Chinosol Company. Didn't you?

A. I did.

XQ. 141. And did you not further observe in this same instrument the following language: "As such Alien Property Custodian I do seize said letters patent and every right, title and interest with respect thereto including all damages and profits * * * subject to the rights, if any, of Chinosol Company"? You saw that, did you not?

A. I demurred—

XQ. 142. Did you or did you not see that?

A. Yes.

XQ. 143. Just answer my question, please.

A. Yes.

XQ. 144. And in your correspondence with the Alien Property Custodian's office subsequent to the seizure I ask you whether you did not get from the Alien Property Custodian a letter dated October 21, 1919. Look at this (handing witness paper). You got

that letter from the Alien Property Custodian, did you not?

THE COURT: The exhibit being what?

MR. KRESEL: Plaintiff's Exhibit 189.

A. I did.

XQ. 145. You will observe that in that letter the Alien Property Custodian says this: "As the record in the Patent Office now stands the patent has been demanded by the Alien Property Custodian and conveyed to The Chemical Foundation, Incorporated, subject to whatever rights you may have therein." You observed that, didn't you.

A. I did.

XQ. 146. Prior to the outbreak of the European War you were the selling agent here for the German manufacturers of this product called Chinosol, were you not?

A. Never.

XQ. 147. Did you prior to the outbreak of the European War import this product called Chinosol?

A. I did.

XQ. 148. And prior to 1914, the outbreak of the European War, did you ever manufacture Chinosol here in the United States?

A. No.

XQ. 149. But since 1911 you had this assignment of the patent and the trademark?

A. Yes.

XQ. 150. So at least for a period of three years, from 1911 until 1914, while you were the assignee of the patent and the trademark, you did not manufacture the product here?

A. No.

XQ. 151. And prior to 1914 you had never manufactured it here, had you?

A. No.

XQ. 152. You used to import this product at about $2 a pound, did you not?

A. I don't remember what it did cost, the prices have varied so.

XQ. 153. Try to put your mind on it and tell me whether you did not import this product from Germany prior to the outbreak of the European War at about two dollars a pound?

MR. ANDERRSON: One minute. If your Honor please, I do not know what relation this has to the direct examination. Therefore I will have to object to it as being outside the direct examination, unless counsel wishes to make the witness his own, which I will not object to.

MR. KRESEL: It has a direct bearing upon your question of value.

MR. ANDERSON: All right, I want to make that note on the record.

THE COURT: Do you withdraw your objection, Colonel Anderson?

MR. ANDERSON: What do you say, sir?

THE COURT: Do you withdraw your objction?

MR. ANDERSON: No, sir; I do not withdraw the objection. I do not object to the examination at this time, even if it is outside of the direct examination, because I do not want this witness to come here two or three times. But I do want notice given that counsel makes him his own witness.

THE COURT: I think that objection is well taken. It seems to me the testimony of this witness, Colonel Anderson, is offered probably on two grounds: First, to denote carelessness of the Alien Property Custodian in making any seizure with respect to this patent; second, on the value of the patent seized. It seems to me that these questions are within the scope of that recent inquiry by you.

XQ. 154. Will you please answer the question?

A. I think I did answer it; didn't I?

XQ. 155. No, you did not.

A. I said yes.

XQ. 156. Oh, I am sorry that I missed that. Just in a very few words won't you tell us what this stuff Chinosol is; what does it do?

A. It is an antiseptic used by the medical profession.

XQ. 157. Well, I assume it is used by the medical profession, but what does it cure?

A. We don't say that it cures anything. We are not permitted to in accordance with ethics.

XQ. 158. I did not ask you that. I want to know what it cures, if you can tell me; if you can not, we will pass on to something else.

A. I can only quote from the literature of the medical profession. I don't know. We publish the statements of the medical profession.

XQ. 159. You publish statements of your own and not from the medical profession, do you not?

A. Yes, but we do not say—

XQ. 160. Yes is the answer; now let me put my next question. In this pamphlet you state what it is that this Chinosol cures, do you not?

A. I don't think we have ever made the statement over our own name that it cures.

XQ. 161. Well, what statement do you make about it?

A. We say that that is "of value in."

XQ. 162. "Of value in." Well, I will adopt your language. What is it of value in?

A. Cuts, burns, scalds and general antiseptic as that term is implied.

XQ. 163. Well, you say that it "should be used in all cases where you have splinters, cuts, bruises, burns, scalds, chilblain, frost bite, chafed surfaces, prickly

heat, ingrown toe nails, insect bites, ivy poisoning, pimples, chapped hands, as a tooth wash, in tooth cavities—(and pain resulting therefrom), irritated gums, after shaving, for removing dandruff"—now, is that all it does?

A. That is strictly correct.

XQ. 164. And that is what you advertise?

A. Yes, sir.

XQ. 165. Do you also say that—"In intense pain caused by the indigestion of tainted food, place one tablet Chinosol in tumbler of hot water and drink contents. If pain continues after 15 minutes send for a physician?

A. Correct.

XQ. 166. You also say that if after applying Chinosol to a tooth ache, "the tooth ache persists, place small piece of Chinosol tablet in the cavity, plug with small piece of wet absorbent cotton and then go to your dentist."

A. Strictly correct.

XQ. 167. Then, are there any other uses of this drug?

A. A great many.

XQ. 168. You use it for cleaning nursing bottles, do you not?

A. Yes, sir.

XQ. 169. This is your advertising, is it not? (Showing to witness.)

A. Yes, sir.

MR. KRESEL: Will you just mark that for identification, please?

Marked "Defendant's Exhibit B for Identification."

XQ. 170-171. Now, this patent was seized in the month of March, 1919, was it not?

A. I do not know just when it was seized.

XQ. 172. Well, Plaintiff's Exhibit No. 203-A, which is the demand, is dated March 1st, 1919?

A. That is the demand, but they did not state that they seized it.

XQ. 173. Well, I will not argue that with you. When did you first learn that it was seized? I will put it that way.

A. I think it was in June.

XQ. 174. June, 1919; when was it returned to you?

A. I testified the other day when I—

XQ. 175. November, 1919, was it not?

A. Either November or October.

XQ. 176. October or November, 1919. So that up to the time that you learned of the seizure, nobody interfered with you in the enjoyment of this patent?

A. Yes, sir. General gossip in the trade—

XQ. 177. I did not ask you that. I said who?

A. The whole trade.

XQ. 178-179. Did anybody manufacture under the patent?

A. I do not know.

XQ. 180. That is what I mean. Did anybody interfere with you; did anybody try to stop you from using the patent?

A. No.

XQ. 181. No. Now, from June, 1919, when you discovered that it had been seized, and until October or November, when it was returned to you, did anybody interfere with you; did anybody try to stop you from using this patent?

A. I can not answer that question yes or no. It is impossible.

XQ. 182-183. I want to know whether anybody tried to stop you or said anything or raised any objection to your using this patent between June and October or November, 1919?

A. I can not answer the question that way, sir.

XQ. 184. Did anybody come to you and say to you

that you had no right to use that patent during those months?

A. No, sir.

XQ. 185. Now, as to the trade mark, you testified that you did not learn of the fact that it had been seized until many months after it had in fact been seized?

A. Correct.

XQ. 186. And that as soon as you learned of it, you went to The Chemical Foundation, and they immediately re-assigned it to you, did you not?

MR. ANDERSON: I beg your pardon. If your Honor please, the witness did not testify to that. He put a letter in here with the date of the assignment. I do not want to interrupt and I do not think that counsel did it intentionally, but I do not think that it should be stated even unintentionally, and there should be no mistake about it, he did not so testify.

XQ. 187. Did you not so testify?

A. I did not testify they reassigned it immediately to me, no, sir.

THE COURT: Just a moment, Mr. Kresel. What is your specific objection, Colonel Anderson?

MR. ANDERSON: It has been relieved now, because the witness has said he did not so testify. My specific objection was that the quotation of the witness's testimony was erroneous and in making my objection it was to call attention to that error.

THE COURT: Then there is nothing now before the Court on that objection?

MR. ANDERSON: No, sir. The witness has answered that he did not so testify, and that clears it up.

XQ. 188. How soon after you learned that it had been seized, was it assigned to you?

A. I do not remember, sir.

XQ. 189. How many months elapsed between the time that you found out that it had been seized, and the time when it was assigned to you?

A. My letters to The Chemical Foundation ought to tell, but I do not seem to have the memorandum here, sir. This is all in reference to the patent, not to this trademark, sir. I do not remember just how long.

XQ. 190. Do you remember the month when you found that it had been seized?

A. It was either last spring or early in the fall.

XQ. 191. Of 1922?

A. 1922.

MR. KRESEL: Now, may I have the assignment of that? You say you put that in? I do not recall any such assignment was put in.

MR. ANDERSON: I might have overlooked it. You can go ahead. I will put it in. Go ahead and use it.

THE WITNESS: I have it here.

MR. KRESEL: The witness has it.

THE WITNESS: It was handed to me, and I wondered why I had that.

MR. KRESEL: There it is. The witness has it and it is marked Plaintiff's Exhibit No. 211.

THE CLERK: That is not in evidence. It was offered the last time and marked 211, and then withdrawn and was not put in evidence.

XQ. 192. Use that paper and tell me the date when you got your trademark back?

A. This is dated November 29th, 1922.

XQ. 193. All right. That is all I wanted.

A. Do you wish this, Mr. Kresel?

XQ. 194. No.

MR. ANDERSON: Give it to me, please. (Paper handed to Mr. Anderson.)

XQ. 195. When did you first, if ever, manufactu Chinosol in the United States?

A. I think it was in 1918.

XQ. 196. What part of 1918?

A. I don't remember.

XQ. 197. Well, that is a very important thing i your business experience, is it not?

A. Not so very.

XQ. 198. No so very; that is all I want. Was the latter part of 1918?

A. I do not remember.

XQ. 199. Well, how much Chinosol did you manu facture in 1918?

A. That I do not remember.

XQ. 200. How much Chinosol did you sell in 1918

A. I could not tell.

XQ. 201. When you say you manufactured Chino sol, did you manufacture the intermediate or did yo buy that?

A. Bought it.

XQ. 202. What is the name of the intermediate

A. We used two or three.

XQ. 203. What were they?

A. One was oxychinolin, and the other was ortho aminophenyl.

XQ. 204. The latter is not covered by the patent is it?

A. No.

XQ. 205. So you were manufacturing Chinosol a least in part in a way not covered by the patent?

A. Not at all.

XQ. 206. You were using an intermediate for th manufacture of Chinosol which was not the interme diate described in the patent?

A. Because we—

XQ. 207. I did not ask you why; did you not?

A. Yes.

XQ. 208. So you bought your intermediate from Germany?

A. No.

XQ. 209. Have you bought any intermediate from Germany since 1914?

A. No.

XQ. 210. Have you imported Chinosol since 1914?

A. Yes.

XQ. 211. When did you start importing again since 1914?

A. I do not remember the exact date.

XQ. 212. Well, was it this year or last year?

A. Before both.

XQ. 213. 1920?

A. As soon as the permits were granted by the War Trade Board.

XQ. 214. Yes. You made applications to the War Trade Board for permission to import this just as soon as the Armistice was signed, did you not?

A. I did.

XQ. 215. And they declined to give you licenses, did they not?

A. They declined and—

XQ. 216. Did they not, yes or no?

A. Yes and no.

MR. ANDERSON: Both.

MR KRESEL: That is all right. If you are satisfied with that, I am.

MR. ANDERSON: I am.

XQ. 217. And during 1918 and 1919, the War Trade Board refused to issue you such licenses, did they not?

A. No and yes.

XQ. 218. Very illuminating?

A. Well, it is the truth.

XQ. 219. Please do not argue with me.

MR. ANDERSON: I do not want to object, if

your Honor please, but the witness should have a chance to answer. You can not confine a witness on cross-examination to a categorical yes or no, if it is not the truth. He has a right to state the facts.

MR. KRESEL: You can bring out the facts on your re-direct examination.

MR. ANDERSON: The witness has a right, on cross-examination, to make a complete statement. You can not have him make a half statement.

MR. KRESEL: If there is anything that is settled, it is that the cross-examiner has a right to decline to accept any voluntary statements from the witness.

MR. ANDERSON: But the witness also has the right to make a true statement; not a voluntary statement, but as long as it is responsive to the question, he can not be required to answer categorically yes or no. There is vast authority for that.

XQ. 220. In 1914——

MR. ANDERSON: One minute. I would like your Honor's ruling on that question because I think your Honor is entitled to.

THE COURT: Were you asking a question or proceeding to discuss this question?

MR. KRESEL: No, I was asking a question and that question was interrupted.

MR. ANDERSON: He interrupted the witness and refused to let him make a complete answer.

THE COURT: Did you want to qualify your categorical answer in any way?

THE WITNESS: I did.

THE COURT: Then I shall accept his qualification, Mr. Kresel, allowing you to state your objection and question if you desire. But the witness must stick in his explanation to facts and not reasons.

THE WITNESS: At first the War Trade Board declined to give me a license. I appeared before the Board in Washington. They granted me the license. I next applied for a license and they granted that. The goods were on the way here and they cancelled that license. I went down to Washington, explained that my merchandise was on the ocean in accordance with a license that they had granted. They told me that some one was manufacturing——

THE COURT: You do not want that, do you?

MR. ANDERSON: No, sir, that is hearsay. Just say what it is.

THE COURT: The question restricted you as to whether you had a license or had not a license and you have already gone a little out of the scope of that. Now then, did they grant you another license? Not what they said, but did they grant you another license? You may state that.

THE WITNESS: The license was renewed and none has been refused since.

MR. KRESEL: Now, have you finished?

THE WITNESS: Yes, sir.

XQ. 221. All I want to know is, when the first license was granted and then cancelled?

A. I can not tell you the dates.

XQ. 222. What year?

A. I can not tell you that.

XQ. 223. What month?

A. Nor that.

XQ. 224. Now, in 1914, what was the amount of the sales of Chinosol?

A. I prefer not to state.

XQ. 225. What is that?

A. I prefer not to state.

XQ. 226. What were they in 1915?

A. Greater than 1914.

MR. KRESEL: I ask that that be stricken ou
I asked for a figure.

XQ. 227. What were they in 1915?

A. I can't tell you.

XQ. 228. What?

A. I can't tell you.

XQ. 229. What were they in 1916?

A. I don't know.

XQ. 230. What were they in 1917?

A. I don't know.

XQ. 231. What were they in 1918?

A. The same answer.

XQ. 232. In 1919?

A. The same.

XQ. 233. 1920?

A. Same answer.

XQ. 234. 1921?

A. Same answer.

XQ. 235. 1922?

A. Same answer.

XQ. 236. Now, when you say "the same answer,"
is it that you do not know or that you prefer not t
tell?

A. I couldn't tell you.

XQ. 237. What were your gross profits on th
sale of Chinosol in 1914?

A. That is a personal question. I refuse t
answer.

XQ. 238. What were they in 1915?

A. The same answer.

XQ. 239. What were they any year since tha
time?

A. The same.

XQ. 240. What was your net profit on the sale
in 1914?

A. I decline to answer.

XQ. 241. Is your answer the same as to each year since that time?

A. Yes, sir.

XQ. 242. Under your agreement of the first of June, 1908, with the Germans, how much were you paying them?

A. I don't remember.

XQ. 243. That agreement is still in force?

A. No.

XQ. 244. When did it come to an end?

A. After we had completed——

XQ. 245. When, when, when? Just the date.

A. I don't know.

XQ. 246. You don't know. That is an answer.

MR. KRESEL: I now move to strike out from the record every answer made by this witness wherein he undertook to assign a value to this patent and trademark, not only upon the grounds that I have urged in objections to the testimony as it was adduced, but upon the further ground that the witness has now declined to furnish information in answer to questions which is relevant both for counsel and for the Court upon which to appraise the worth of his testimony as to the value.

THE COURT: As to the value of what?

MR. KRESEL: Of the patent and the trademark.

THE COURT: I have missed a fact, Mr. Kresel, as to the trademark. I am not asking for further evidence. I am only asking whether these facts are disclosed by the evidence already in, and that is, where the Chinosol Company got the trademark. Was it new with them or did they acquire it?

MR. KRESEL: No, your Honor; the trademark came to them by assignment from the Germans by the same instrument as the patent.

THE COURT: And under the same conditions?

MR. KRESEL: Under the same conditions exactly. If your Honor desires, I shall read that portion.

THE COURT: No, not unless it is questioned. Have you anything to say, Colonel Anderson?

MR. ANDERSON: Of course, we insist that the evidence is clearly material and relevant. We object to the motion. We do not care to argue it.

THE COURT: The motion is based on grounds that are sound and well taken. There are no facts before this Court which will enable this Court to reach any conclusion as to the value of this patent from the testimony of this witness, oral or documentary. But the motion is denied under the general rule we have adopted with respect to the evidence. So far as this Court is concerned, no further attention will be paid to the testimony of this witness under these circumstances.

MR. KRESEL: That is all, sir.

MR. ANDERSON: That is all right, sir. I want the evidence to stay on the record, but I do not care to argue it at this time.

THE COURT: It has got to be argued now or not at all, before me.

MR. ANDERSON: I do not want to argue it before your Honor, but I want it on the record, because with the greatest possible deference, I differ with your Honor as to the value of the testimony. If your Honor does not think it has any value, then of course you will not consider it. If we were trying the case before a jury, your Honor would strike it out, with an exception to the plaintiff. I quite recognize that, and consequently I will not trouble your Honor to hear argument on

evidence that you do not think is material. At the same time, I want to retain it in the record. I may be wrong.

THE COURT: I may be wrong, Colonel Anderson. But there is only one time to debate this question, and that is now. There is only one time to correct my ruling on this, if it is in error, and that is now. You now have that opportunity. If this question is to be debated or there is any doubt about it in your mind, I desire to hear you now. If you do not care to be heard, I shall consider it an abandonment of this testimony.

MR. ANDERSON: You mean for your consideration?

THE COURT: It must be taken as an acknowledgment of the soundness of the motion to strike out. If you can get any other Court to take any other view of it, that is your privilege, but I shall make it very clear that your action here is such as to amount to——

MR. ANDERSON: Then I will state among other things why I think the evidence is material. But I do not want to argue it.

THE COURT: I did not mean that, Colonel Anderson.

MR. ANDERSON: I will state in the first place that, I think so far as the question of value is concerned, this witness having had experience in the manufacture of materials of this character and having had experience with the use and development of trademarks of this character, he is competent to come on the stand and give an opinion without any further evidence of his qualifications, as to the value of this trademark and this patent, and that that principle is exactly the same as the principle under which we receive evidence of non-expert persons—without conceding that this gen-

tleman would not qualify as an expert. It is the same principle as that under which we receive evidence of non-expert persons in condemnation proceedings and other proceedings for the ascertainment of value of property, and of those who are familiar by experience with values in that neighborhood or properties of a similar character.

Therefore, if this witness had never manufactured a pound of Chinosol, if he had never owned a trademark, but had dealt with the subject of trademarks and familiarized himself with them in a general way, he would be competent upon the facts in this record to come here and give his opinion of the value. I quite concede that it is for your Honor to weigh the value of that opinion, and you may give it no weight or you may give it much weight, as you see fit; but it is clearly admissible evidence in my view, with all deference to your Honor's view.

In the second place, it appeared on the direct examination that this patent was seized. What the seizure means is a question of law and I do not care to argue that unless your Honor desires me to. But it was seized, and the Alien Property Custodian advised this gentleman that they could not—we will put it in the narrowest terms—clear his title on that seizure without conveying to him something that they had conveyed to The Chemical Foundation, and they said they had seized this patent and conveyed it to The Chemical Foundation. The correspondence is in the record. The Chemical Foundation when approached on the subject not only did not reconvey this patent for over a year afterward, in 1920 as the evidence here shows, but in addition to that undertook first to induce this manufacturer to take out a license from them to use his own product, and in addition

to that not only undertook to make him take a license, but to have him release them from all damages that they had done him by holding this patent. He testified that he had suffered serious damage in the trade when the knowledge had gone out to the trade of what had happened. Those were the circumstances. Whatever the evidence may be worth, and I am not going to argue its weight at this time, that evidence is admissible as showing a course of dealing in a case which charges a conspiracy to acquire these properties for the selfish purposes of the company acquiring them.

THE COURT: May I ask you, Colonel Anderson, what constitutes a seizure under the law, and what is the evidence in this case which shows the seizure and what was seized?

MR. ANDERSON: As I understand it, the demand is *ipso facto* a seizure, that the demand operates immediately to seize. I may further state that the first communication to the Alien Property Custodian that this patent was owned by this Company and recorded, giving the record book and place, reached the Alien Property Custodian's office, as shown by this correspondence, before this patent was ever assigned to The Chemical Foundation.

THE COURT: I did not understand that. Will you repeat that last statement?

MR. ANDERSON: That the claim of this gentleman that he owned this patent, by return of the demand, service not accepted, and the notice to the Alien Property Custodian that he as an American citizen owned it, that it was recorded in such and such a book and at such a place, and that there was no German interest in it, an absloute assignment, was communicated to the Alien Property

Custodian before any assignment was ever made of this patent to The Chemical Foundation.

THE COURT: May I ask this question, Colonel Anderson, because I ought to know this and want to know it, and it seems to me the time to know it is now. Assume there was a contingent German interest depending upon the happening of a future event or events, is it your contention that such an interest could not be seized under the Trading with the Enemy Act?

MR. ANDERSON: If it were a purely contingent German interest—and that involves a construction of that assignment, which we claim is absolute——

THE COURT: I understand.

MR. ANDERSON: We claim that assignment is absolute under the law, that the limitation upon it is void and can not be enforced, and it is an absolute assignment. Therefore, there was no contingent German interest in this patent on the face of the return.

THE COURT: That is, you contend that the assignment to the Chinosol Company was an absolute assignment?

MR. ANDERSON: Was an absolute assignment in law.

THE COURT: Let me see just where your contention is on that. It purported on its face to be not an absolute assignment, did it not?

MR. ANDERSON: There were certain terms of limitation and violation of contract questions involved in it that were conditions of its contingency.

THE COURT: From your standpoint what was the duty of the Government of the United States with respect to the seizures in such cases—to resolve all doubts and questions against it or to re-

solve them in favor of the United States? I am speaking of seizures and not sales.

MR. ANDERSON: Your Honor, I will answer the question as best I can. In my judgment when the Government of the United States received notice, returning this demand, which until served was not a seizure, that this patent absolutely belonged to an American company and that there was no German interest in that company, and that this assignment was recorded at a certain place, it was absolutely wrong—I will put it that way—for the Government of the United States to proceed without further investigation and immediately seize that patent by formal service of a demand, and thus put a cloud upon this man's title, seriously injure his business, and then assign it to a third person.

THE COURT: That is, the Government should then have taken the position with respect to this assignment that it now takes?

MR. ANDERSON: The Government should then have taken the position that in view of this notice from an American citizen it would inquire into the situation fully and if it developed that there was a German interest it would seize it; but the respect for the rights of American citizens is the highest function of the Government and a reckless disregard of them is absolutely wrong.

THE COURT: I am sorry to press you further, Colonel Anderson.

MR. ANDERSON: I want you to press me further, sir.

THE COURT: But I have missed some of your reasoning, I am sure. The seizure, as I understand it, did not purport to seize the patent, but only to seize such interest as did not exist in the Chinosol Company.

MR. ANDERSON: It was subject to such rights as the Chinosol Company might have, whatever they were. It seized the patent, it seized the trademark, but subject to the rights that the Chinosol Company might have. That immediately created a cloud upon the title of this property. It was just as if they had gone and taken my real estate, my home, taken possession of it and said, "I seize this property because at some time a German had an interest in it, and you can show what your rights are or whatever rights you have," and if that were the only property I had it would destroy my credit. Suppose they seized my bank stocks or anything else. The Government of the United States has the duty to find out the facts and resolve the facts in favor of American citizens.

THE COURT: Then what is the Government's present contention the Governmental agency should have done with respect to this patent?

MR. ANDERSON: My answer to that is this, sir —that these people should first have investigated this record carefully enough to have known the status of this patent before they seized it.

THE COURT: And then what?

MR. ANDERSON: Second, when they found the status, if they had any suspicion that there was a German interest in this patent, they should have notified the American using it and if necessary forwarded to him a demand and asked him to accept it and disclose that German interest, as the Statute requires. He was subject to penalties if he did not. If he came back and said that there was no German interest in this property, that he had an absolute assignment, and said, "Here is my record of title," it should have carefully investigated before it took possession of his prop-

erty and thus injured his business which was resting on good will and this trademark before it made the seizure. Then if it was convinced that there was a German interest involved, it could have made the seizure of that German interest, carefully conserving his interest in the meantime. But to have gone on after notice and immediately seize and demand this property, although Section 9 of this Act stopped the right to dispose of this property when notice was given—to have gone on and seized it and transferred it to The Chemical Foundation and then refer him to The Chemical Foundation, was an outrageous invasion of his rights.

THE COURT: Then as I understand you the situation with respect to this patent and its status, and the several interests therein, was disclosed by the agreement which was of record in the Patent Office?

MR. ANDERSON: It was disclosed that this patent had been assigned to this American, that is all.

THE COURT: The Patent Office record disclosed the several interests of the parties in this patent—that is, it was documentary evidence only?

MR. ANDERSON: The assignment is here and it speaks for itself, sir. It is an absolute assignment. But they did not rest there. If they had seized this patent without any notice, if this man had come back and accepted that service or had not given them notice he owned this patent absolutely and had not given notice that there was not a German interest therein, there might have been some justification; but to seize it after notice that there was no German interest there—if your Honor will observe, there is not another let-

ter from the Alien Property Custodian to this man after he had given notice that he owned this patent and trademark, for the next six months. They never paid any attention to it after that until he again insisted upon a reply.

THE COURT: But was not the assignment of record? As I understand you, the assignment disclosing this agreement was of record in the Patent Office. Am I right about that?

MR. ANDERSON: The assignment was of record, yes, sir, but the assignment as I construe it is absolute. May I suggest with all possible deference to your Honor that there was no obligation on these people to hurry the seizure of this property. The war was over and the President had so declared in his address to Congress. This property was owned by an American citizen, being used by an American citizen in the United States. What was the need of haste in getting it if they were not trying to profit through The Chemical Foundation in it? There was not any obligation to seize this property. It was mere authority. Yet when the man notifies them it is his property and he is an American citizen, entitled to the protection of its Constitution and laws—and the Act only relates to foreign property—they do not inquire into it at all, but go to work and seize it. But they do not stop there, they do not only seize it when the Government could redress the wrong, but they assign it to a private corporation, which in turn asks him to pay a royalty on his own property. If that does not show the character of this transaction, what can?

I did not mean to go into all this argument, and do not want to argue this case in anticipation,

but I say every word of this testimony shows evidence of irregularity, to put it very lightly.

MR. KRESEL: I do not suppose your Honor desires me to answer all this at this time.

MR. ANDERSON: I would not have stated this but your Honor stated that you felt I abandoned this testimony unless I did state it.

THE COURT: Yes, I did say that.

MR. ANDERSON: I am undertaking to state my chief reasons. In other words, if your Honor please, I want to make it clear here again that the Government is not only going to contend that this was a sale by a trustee to himself and therefore void *ab initio* on the familiar principle, that it was a confiscation of property and therefore outside the power of anybody except Congress, but that this whole transaction, the sale of this property and the seizure of this property, was part of a conspiracy to get control of this whole business for the purpose of restraining interstate and foreign commerce in the United States, and absolutely void and against the express mandates of the Statutes of the United States no matter who did it. And that conspiracy is an essential part of this case and surrounds it all. This sale was only one of the acts in that conspiracy, and all these transactions which are collateral are merely evidence of the conspiracy and the adoption thereof by the parties concerned in this transaction.

Under those circumstances we are entitled to show any facts which lead to that. It has been suggested here that when I make that charge I also question the validity of the seizure by the Government and therefore the title of the Government. I do not to this extent—that that seizure has been confirmed in the Government of the

United States by treaty and is the law of the United States; but this sale has not been confirmed by any treaty nor in any other way, as I shall contend at the proper time. And if it had been confirmed, permeated as it is from the very first to the last transaction with an obvious purpose here which is contrary to the laws of the United States, it would be absolutely void anyhow.

I do not want to get into all of this broad argument, but this evidence is absolutely material as bearing upon those issues. And when I say I do not want to get into it, I want your Honor to understand that I am willing to answer your Honor's questions, of course, and that when I hesitated to state my reasons for insisting upon this evidence and your Honor insisted if I did not it was an abandonment, your Honor will please not understand there is any intention other than to be absolutely open and frank with this Court, except that I do not want to get into these long arguments.

THE COURT: I merely wanted your position. I could not think of any theory upon which you could predicate any value in this testimony.

MR. ANDERSON: As that question has come up, may I state my position on that, for if I state my position a little more fully it may save us time.

THE COURT: You have indicated that you do not care to state any more at this time than you have to. I am willing to let this question terminate at the present time in this manner: That I still do not see in view of the language of the assignment in fact, whatever its legal construction may be, where fault is to be found with the seizure of such interest in this patent as did not exist

in an American. He may have had the temporary full possession, but that may have been subject to being defeated by his subsequent act, and then if defeated the title would revert to German owners. So far as I can see now, that contingent interest or possible contingent interest if it existed was subject to seizure, though I am not passing on the construction of that assignment. If they did not get anything that is another matter.

Now then, whether the demand and seizure were technically correct, that is, whether they should have been seized and obtained subject to his interest, or whether they should have seized such interest as may now or hereafter be determined to be German interests, seems to me to present another question. The testimony may remain subject to such future use as you may disclose it is entitled to.

MR. ANDERSON: Your Honor understands then that the question of waiving this testimony for any future use is removed by this discussion?

THE COURT: Yes.

MR. ANDERSON: Very good, sir.

MR. KRESEL: What is removed? I do not quite get that.

THE COURT: That Mr. Anderson has made clear that he does not abandon.

MR. KRESEL: We can take that for granted. Colonel Anderson announced in very positive terms that he never abandons anything.

MR. ANDERSON: That is right; not under the allegations of this Bill.

MR. KRESEL: There is just one point, Colonel. I think you would like to be corrected if you make a statement which is unwittingly wrong. You stated in your argument that the seizure was made subsequent to the receipt of a letter from

this witness protesting that he was the owner of the patent. That was your statement.

MR. ANDERSON: That was my understanding.

MR. KRESEL: I now point, if your Honor please, to page 223 of the Bill, wherein it is stated that the seizure of this patent was made on the 25th of March, 1919. Your Honor will see under patent No. 906,918—that is the number of this patent—under the heading "Date of service and filing," March 25th.

If your Honor will turn to Plaintiff's Exhibit 185, which is a letter that Colonel Anderson says was written by this witness, wherein he protested that he was the owner of the patent, your Honor will find that the letter was receivod by the Alien Property Custodian on the 26th of March, which is the day after the seizure.

THE COURT: You need not go into it further now, Colonel Anderson.

MR. ANDERSON: I am very much obliged to counsel for the suggestion. If I am in error in any statement I make, I am always glad to be corrected. But I do not concede his conclusions.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 247. You were asked on cross-examination as to a certain agreement mentioned in the assignment of the patent and trademark in question to you, which agreement is referred to as dated 1908. I will ask you whether you have ever had any notice of termination of your rights under said assignment or any objection from the original owner as to your use of the patent or trademark?

MR. KRESEL: I object to that. I object to it upon the ground that it calls for his conclusion,

upon the ground that it calls for his construction of a document which he has failed to produce, upon the ground that it calls for hearsay evidence and upon the ground that it is immaterial and irrelevant.

THE COURT: What is the materiality, Colonel Anderson?

MR. ANDERSON: In this, that he has stated he could not produce the agreement because it was lost. He was asked on cross-examination as to the agreement and now I want to know whether the original owner has ever demanded of him the termination of the agreement or given him any notice that this patent was not completely in him. It is not a question of the construction of the agreement, but merely whether he had any demand from the original owner—for what it is worth.

MR. KRESEL: But your Honor, with the agreement not before us, this witness is asked to state whether he has ever received notice of termination of the agreement. That certainly calls upon him to construe the notice which we have not before us.

THE COURT: But apart from that, I do not see that the answer can be material. It seems to me, depending upon the construction of the Trading with the Enemy Act and depending upon the construction of the assignment, if there was a possible German interest in the patent which the Government was authorized and empowered to seize, whether that interest has become an actual present interest or still remains a contingent interest, seems to me is immaterial. I do not see how that would make any difference.

MR. ANDERSON: They never made any claims at all.

THE COURT: I do not see it, Colonel Anderson, because it seems to me if they were going to seize everything that belonged to the Germans, they would have seized contingent interests as well as actual interests. It seems to me that possibly it might be relevant on your theory as to whether that had been done at the time of seizure, not since.

RDQ. 248. I will say up to the time of seizure. I will cover the whole thing in one question.

A. I had not.

RDQ. 249. You were asked whether there was any interference with the use of this patent. I will ask whether or not the officers of The Chemical Foundation undertook to induce or require you to take out a license under this patent.

THE COURT: Have you not already gone into that?

MR. KRESEL: That was all covered by his direct testimony.

MR. ANDERSON: I am not sure that it is covered by the direct testimony.

THE COURT: Of course, if you mean his conclusion, it was not. If you mean the facts, it was, unless you have some new facts.

MR. ANDERSON: He was asked as to whether there was ever any interference, but he was not allowed to say anything, except yes or no. He was asked on cross-examination.

THE COURT: His relations with The Chemical Foundation were gone into fully by you and it would be improper for you to go into them again. This question does go right back to the facts or is irrelevant because it calls for a conclusion.

RDQ. 250. Have you the re-assignment to you of this trademark by The Chemical Foundation?

A. I have.

RDQ. 251. May I see it? (Handing paper to counsel.)

MR. ANDERSON: I now offer in evidence an instrument of assignment from The Chemical Foundation, signed by Francis P. Garvan, President, to the Chinosol Company, dated the 22nd day of November, 1922, together with the stamp of the Commissioner of Patents showing the recordation thereof, with the place of recordation, on December 8, 1922, to be identified as Plaintiff's Exhibit 214.

THE COURT: Admitted under the same conditions as previous exhibits.

Received in evidence and marked "Plaintiff's Exhibit No. 214." *(See Exhibits, Vol. I, page 508.)*

MR. ANDERSON: I will ask that the Plaintiff have leave to substitute a copy and withdraw the original, as it is the witness's evidence of title.

MR. KRESEL: No objection.

MR. ANDERSON: I now offer in evidence a duplicate original, apparently, of a paper called "Release and Discharge" signed by the Chinosol Company, by this witness as President, dated the 29th day of November, 1922, to be identified and read in evidence as Plaintiff's Exhibit No. 215.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 215." *(See Exhibits, Vol. I, page 510.)*

MR. ANDERSON: As this seems to be an original record of the witness, I would also ask that we be allowed to substitute a copy later on in the trial and withdraw the original.

MR. KRESEL: No objection.

THE COURT: A copy may be substituted.

MR. ANDERSON: That is all, if your Honor please.

MR. KRESEL: That is all.

MR. ANDERSON: With your Honor's permission, I would like Mr. Parmele to be discharged from the subpoena.

MR. KRESEL: No objection on our part.

THE COURT: You are not required to return under your subpoena, Mr. Parmele.

(Witness excused.)

MR. ANDERSON: I will call Mrs. Wilson.

MARGARET R. WILSON.

MARGARET R. WILSON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and place of residence?

A. My name is Margaret R. Wilson. My address is Washington, D. C.

Q. 2. What is your present position or employment?

A. I am Chief of the Division of Enemy Trade of the Federal Trade Commission.

Q. 3. Are you in Court under subpoena from this Court?

A. I am.

MR. ANDERSON: May I explain to the Court that the Statute prohibits the production or opening of any of the records of the Federal Trade Commission under heavy penalty by any employee, unless under subpoena of the Court. I wish to make it clear on the record, and I will make the statement with the consent of counsel, that Mrs. Wilson was summoned on yesterday by subpoena *duces tecum* to produce the records of

the Federal Trade Commission, as to which I will inquire.

Q. 4. Did this subpoena served upon you require you to produce certain records of the Federal Trade Commission?

A. It did.

Q. 5. Have you the records in Court called for by that subpoena?

A. I have.

Q. 6. Have you in Court the original or duplicates of licenses issued by the Federal Trade Commission under various enemy patents from October 6th, 1917, down to date?

A. I have.

Mr. Kresel: Are they originals or duplicates?

Q. 7. Have you the originals or the duplicates?

A. I have the original licenses.

Q. 8. Will you produce those papers?

A. Witness produces papers.

Q. 9. Are the documents which you now hand me the original licenses issued by the Federal Trade Commission to various licensees under the Trading with the Enemy Act, from October, 1917, down to date?

A. They are the original licenses.

Q. 10. Do you know how many of them there are?

A. There are approximately sixty. Some are group licenses. That is, there are three or four sections involving the one license, as under Salvarsan, but approximately sixty.

Q. 11. Approximately sixty licenses?

A. Those are not all the licenses that were issued by the Commission, you understand. Those were all that were involved in this present suit.

Q. 12. These are all of the licenses that you know of issued by the Federal Trade Commission or in its

records relating to the patents described in the Bill of Complaint in this cause?

MR. KRESEL: We object to that upon the ground that this witness is not competent to determine.

MR. ANDERSON: Very well. I will withdraw the question. I am trying to shorten it. The licenses will speak for themselves and that is the best evidence.

I now offer in evidence an original document entitled, "United States of America, Federal Trade Commission, License issued to The Dermatological Research Laboratories, date of License November 26, 1917," the document itself consisting of five pages and accompanied by various exhibits mentioned therein, and also by a letter or paper entitled, "Cancellation of Licenses," signed by "J. P. Yoder, Secretary," under seal of the Federal Trade Commission, all of which papers are included in the folder or cover marked as I have described; which papers are identified as Plaintiff's Exhibit No. 216.

MR. KRESEL: To all of which the defendant objects upon the ground that the evidence is immaterial, irrelevant and incompetent. I do not think it is necessary to repeat the objections I urged to the testimony given here by Mr. Storck in support of which I understand this present document is offered. That is my understanding, Colonel.

MR. ANDERSON: It is offered as the original basic evidence on which we will build further the statements already introduced by Mr. Storck and additional statements relating to the same subject.

MR. KRESEL: I simply desire that our objection should be considered as being upon the grounds I

urged to the testimony and the evidence given by Mr. Storck, and further now upon the ground that it is immaterial and irrelevant.

THE COURT: That may be placed of record under our general rule. Were you about to ask that the remainder be admitted under some arrangement that you had in mind?

MR. ANDERSON: Yes, sir. First I wanted to ask that the Government be given leave to withdraw this original and substitute a photostat copy, which we have in Court now.

MR. KRESEL: There is no objection to that of course.

Received in evidence and marked "Plaintiff's Exhibit No. 216." *(See Exhibits, Vol. I, page 515.)*

MR. KRESEL: May we have a copy, if you have copies to spare?

MR. ANDERSON: We have only one copy. We have not had time to make them.

THE COURT: Then it will be introduced and true copy be substituted for the original. Do you want to deal with the remainder of those licenses now?

MR. ANDERSON: Let me have the copy. Just one moment, your Honor.

MR. KRESEL: May the record show the number of this license?

THE COURT: The Trade Commission number?

MR. KRESEL: Yes. It will assist in checking up.

MR. ANDERSON: The license numbers are: No. 1-A, No. 1-B and No. 1-C; the paper and the document.

MR. KRESEL: Thank you.

Q. 13. Mrs. Wilson, there have been produced in Court photostatic copies of the various licenses, the originals of which you have produced. You have

checked those photostats with the originals and they are true photostat copies, complete, are they?

A. I checked them and they are true and complete.

Q. 14. They are full and complete?

A. Absolutely, yes, sir.

MR. ANDERSON: I understand that you do not question the correctness of the copies, subject to correction.

MR. KRESEL: If Mrs. Wilson states that she has checked them, that is satisfactory.

MR. ANDERSON: Now, if the Court please, I would like to shorten the introduction of these papers by submitting the number of documents that are bound together, and perhaps the best thing to do would be to describe them by numbers.

THE COURT: Do you want all the documents within the folder to be admitted?

MR. ANDERSON: Yes, sir.

THE COURT: Then, can not that be done without lengthening our record at this point? You do not have to refer to each paper in the folder in each instance.

MR. ANDERSON: No, sir.

THE COURT: I am wondering whether your colleague can not arrange for their numbering and for the substitution of the copies for them, and you go ahead.

MR. ANDERSON: Yes, sir. Then, I now ask leave of the Court, and with the agreement of counsel, that in order to save time of offering each of these sixty odd folders of papers in detail, that I be permitted to offer them each as a separate exhibit—that is what number?

THE CLERK: 216.

MR. ANDERSON: 216 to whatever number they run to, and that they be numbered by the Clerk in

co-operation with representatives of the respective sides, and considered as all introduced in evidence formally. Can we do that?

MR. KRESEL: There is no objection. Of course, our objection is the same to these others as I have urged to the first one, and subject to that, of course, I have no objection to any reasonable arrangement about the marking.

THE COURT: So ordered, Colonel Anderson.

MR. ANDERSON: And with leave to substitute photostat copies in each case——

THE COURT: For the original?

MR. ANDERSON: For the original. The exhibit number to apply in each case to all the documents embraced in each package tied with red tape and now presented to the Court. Is that agreeable?

MR. KRESEL: Absolutely.

THE COURT: And rivetted together.

MR. KRESEL: I trust that the Court is not holding us responsible for the introduction of all this mass of stuff. I want the responsibility to stop with the other side.

THE COURT: That is purely a matter of costs to be determined later.

MR. ANDERSON: Since counsel called for the original evidence, I do not see any way for us to avoid producing them.

MR. KRESEL: I want to straighten the record on that right now, because if the Court should ever criticize somebody in this case for having loaded up the record with immaterial and inconsequential statements or documents, I do not want to be charged with it. Now, Colonel, you say that I demanded the original records. I made no such demand. On the contrary, I specifically stated

here that I raised no question of formal proof; and I repeat that now.

MR. ANDERSON: I think, if your Honor please, this may become important on the question of costs and therefore I wish to state that I understand the record to show, and I have checked it over, counsel did waive the question of formal proof of documents, but insisted that the figures in the statement presented by the witness Mr. Storck, of the revenues derived from these patents and contracts, as described in the evidence last Friday, was not admissible because it was not the best evidence, and that the originals must be produced.

MR. KRESEL: May I stop you here, Colonel, because you are in error. I made no such objection.

MR. ANDERSON: I read it.

MR. KRESEL: And if I am in error, I shall be pleased to have you turn to the record and point to it. I made no such objection. Now, I will tell you what my position was, if you desire it.

MR. ANDERSON: I would like very much to know.

MR. KRESEL: My position was this: That the statement put in by Mr. Storck did not disclose the dates when the money was received, and that I insisted that until such evidence was admissible at all, if it had any materiality, the dates of the payments were important, and I understood that perhaps Mr. Storck was to go to the Alien Property Custodian, to whom the payments were made, so as to be prepared here to testify as to that. Now, that was my position. You can put in anything.

MR. ANDERSON: I perhaps misunderstood you, but I certainly understood that you objected to the validity of that proof on the ground that it was

not the best evidence as to these licenses, and I called on Mr. Storck in open Court to produce the best evidence, and he said he would bring it here today.

MR. KRESEL: Yes, but you are entirely mistaken, Colonel. The question that I raised about the licenses was this; I want to put you straight: That I called the attention of Mr. Storck to the fact that some of the licenses issued by the Federal Trade Commission covered not only specific licenses, but a class wherein and whereby the licensee was enabled to use all other licenses. You remember that, do you not?

MR. ANDERSON: I remember that, and I wanted to get the licenses.

MR. KRESEL: And then Mr. Storck said he did not know anything about that.

MR. ANDERSON: Yes. And then you asked us whether we ought not to produce the licenses and now we are producing them.

MR. KRESEL: Do not misunderstand me. I do not want to foreclose you except by such objections that I make, from putting in anything you want, but I do not want to have the responsibility placed on my shoulders for throwing in a lot of records like that into this case.

MR. ANDERSON: Since the counsel insists upon the provisions of the licenses, the best and only legal evidence of the provisions of these licenses are the licenses themselves.

MR. KRESEL: That is all up to you.

MR. ANDERSON: And since he objected to this evidence on the ground that those licenses contained provisions which affected both the admissibility and the materiality of that evidence, then I think I suggested that we might agree on the provisions of the licenses.

MR. KRESEL: You did not make any such suggestion, because I am open to the suggestion and I am open to it now. You never made any such suggestion until this present moment.

MR. ANDERSON: It might be that we may be able to stipulate this matter out and withdraw it; but we certainly could not agree last Friday and can not agree now, and we will go ahead and then we might ask leave to withdraw it or omit it from the printed record.

MR. KRESEL: That is up to you.

Q. 15. Mrs. Wilson, the subpoena issued called on you to produce the original cards of entry of the Federal Trade Commission, showing the royalties or license fees or other revenues accruing under the licenses which have been introduced, and any other information contained on the cards with reference to the same. Have you produced those cards? Have you those cards in Court?

A. I have.

Q. 16. And you now produce them?

A. Yes, I now produce them.

Q. 17. Do you know how many of those cards there are?

A. Just one for each license; approximately sixty; one for each license; approximately sixty.

Q. 18. Those cards are the original entries in the Federal Trade Commission office of which you were in charge, showing the fees charged against the licenses under the various licenses introduced here, are they not?

MR. KRESEL: Just a minute. I desire the privilege of examining the witness on that. I do not think the witness should be led to state the contents of the documents in that way. Are you going to offer those now?

MR. ANDERSON: I am. I will go a little further.

Q. 19. Were these cards among the original records of the Federal Trade Commission under your charge?

A. They were.

Q. 20. Were they made up by you and under your charge?

A. By me and under my supervision.

MR. ANDERSON: All right.

MR. KRESEL: May I ask the witness a question or two, your Honor?

THE COURT: Yes.

By MR. KRESEL:

Q. 21. Mrs. Wilson, you did not state when you became the Chief of this Division. When was it?

A. As far as I can give the exact date, about February, 1919, but I have been in charge of that branch of the work since the inception of the work in 1917.

Q. 22. That is, you did the work, although you did not have the title, is that it?

A. No. When I went in originally, in charge of the entire clerical force and managing clerk for the division, as such having charge of the files and records; later I was made Chief of the Division.

Q. 23. These cards that are being offered now you say were either kept by you or under your supervision?

A. Yes.

Q. 24. You mean that on some of them you made the entries yourself?

A. On some I made the entries, and on those on which I did not make the entries I either checked off with the Clerk who did, or supervised it or reviewed it.

Q. 25. Now, the payments of royalties under li-

censes issued by the Federal Trade Commission, are not made to the Federal Commission, are they?

A. No, payments are not.

Q. 26. And were not made under any of these licenses that you have here produced?

A. The original payments were not made.

Q. 27. That is what I am speaking of; the payments were not made to the Federal Trade Commission?

A. Not in every instance. In many instances they were sent to us, the check drawn to the Custodian, and transmitted by me to the Custodian with a detailed report.

Q. 28. That is, in some instances that was the rule?

A. In every instance the report, with the figures, came to me direct, in many instances accompanied by the check.

Q. 29. I was coming to that. But the payments were made to the Custodian?

A. The actual payments were made to the Custodian, who in turn receipted to me.

Q. 30. Receipted to you in writing?

A. Yes.

Q. 31. Are those receipts available?

A. My original entry of the receipt is on the card.

Q. 32. Well, but the receipt was conveyed to you in writing?

A. Let me explain it in this way: When the report came to me from the licensee, I advised the Custodian of the amount.

Q. 33. In writing?

A. In writing, a regular form of the amount that was due, and which amount the licensee was to pay to him direct, and with the report enclosed, in receipt form, which the Custodian in turn filled out and returned to me to complete my file records, as soon as the

remittance came in, in such cases as the check did not accompany the report.

Q. 34. Such receipts signed by the Custodian are part of the records of the Federal Trade Commission?

A. Yes, sir.

Q. 35. Have those been produced?

A. Not all, because the original entries of payment I——

Q. 36. I do not want to know why. You say they have not been produced?

A. No.

Q. 37. Are they available?

A. Not at this moment.

Q. 38. I mean, they have not been destroyed or lost?

A. No, they can be produced.

Q. 39. They can be produced; very well. Now, I notice that on these cards that are being offered, there is a column headed "Royalty paid." You notice that?

A. Yes.

Q. 40. And under that heading there is "Dates?"

A. Yes.

Q. 41. Do I understand that you got the information as to the dates of payment from the receipts signed by the Custodian, which he sent to the Federal Trade Commission?

A. In the instances when the check accompanied the report, the date of the entry there is the date on which I myself handed the check to the Custodian. In the other instances where the check did not accompany the report, the date represents the date of actual payment as receipted by me to the Custodian.

MR. KRESEL: That is all.

MR. ANDERSON: Have you any objection?

MR. KRESEL: Yes. Have you made your offer?

MR. ANDERSON: We offer in evidence the orig-

1627

inal cards, consisting of sixty separate cards or bunches of cards, there being in some instances a number of these cards, the information continuing from one to another, attached by steel brads. They constitute sixty separate papers or documents, and I would ask that they be admitted and identified and read in evidence as Plaintiff's Exhibit Nos. 217 to 335 inclusive.

MR. KRESEL: Just a minute, please. We object to these upon the grounds we have already urged, and specifically upon the ground that these documents are not the original entries, or do not contain the original entries with reference to the dates of the receipt of these moneys, and for that reason are incompetent, immaterial and irrelevant.

MR. ANDERSON: If your Honor please, they are according to the testimony of the witness the original entries of the date that they received the receipt for these moneys from the Alien Property Custodian. I shall later introduce evidence—I can not do both at once—showing the date on which these moneys were received by the Alien Property Custodian, and the documents supporting the same, and the evidence showing the date that these moneys were deposited with the Treasurer of the United States by the Alien Property Custodian; but I am now introducing the original documents of entry, or record of entry of the Federal Trade Commission, showing the record of the transaction through their office, and I will follow it through the others.

MR. KRESEL: In view of the statement by Colonel Anderson just made, I desire to say that if he offers, as he says he will, testimony upon the same point from the records of the Alien Property Custodian, I shall take the position that that

is cumulative and burdening up this record with unnecessary documents. If the purpose is to show when this money was received, inasmuch as it is conceded that it was received by the Alien Property Custodian, it would seem to me—of course, the Colonel will try this case as he pleases—but it would seem to me that the records of the Alien Property Custodian's office should be the records to show that.

Now I say that now to introduce this mass of records from the Federal Trade Commission, to show what their records show as to payments, and then to follow it up with the records of the Alien Property Custodian, to show what their records show as to payments, is, well, I need not state.

MR. ANDERSON: If your Honor please, I am very much obliged to counsel, but on last Friday he was protesting that we were not producing records enough, and I thought we were producing too many. I am sorry I can not please him, but it is my purpose to trace these payments so there can not be any question in this Court or anywhere else of the record as to these payments in the Federal Trade Commission office, in the Alien Property Custodian's office, and in the office of the Treasurer of the United States, if the Court will allow me. So if it is a duplication, I am sorry, but I will meet the situation as it presents itself to me, so that there can not be any question as to the proof of the amount of revenue accrued and the amount of revenue received under these patents.

THE COURT: You may, as far as I am concerned, do that; but you are bearing the necessary consequences in the way of costs, if it be found that you have exceeded the rules with respect to such matters. So, without expressing any view

under the circumstances, you may go ahead and put that of record.

MR. ANDERSON: I now ask leave to substitute in lieu of the originals of those cards, which are the original records of the Federal Trade Commission, photostatic copies thereof; and I will ask the witness:

By MR. ANDERSON:

Q. 42. Have you checked these photostatic copies and can you testify that they are true copies of the originals which you have identified?

A. I have checked them and they are true copies of the originals.

THE COURT: I understand, Mr. Kresel, you make no objection to the substitution?

MR. KRESEL: No, your Honor. Are they being marked as one exhibit?

MR. ANDERSON: No. They will be marked as Exhibits 217 to 335, inclusive.

THE COURT: Let the substitution be made.

License No. 1 (d) (Patent) issued by the Federal Trade Commission to The Dermatological Research Laboratories, dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 217." (*See Exhibits, Vol. I, page 531.*)

License No. 2; 2a; 2b and 2c, issued by the Federal Trade Commission to Takamine Laboratory, Inc., dated November 26, 1917, received in evidence and marked "Plaintiff's Exhibit No. 218." (*See Exhibits, Vol. I, page 532.*)

License No. 2 (d) issued by the Federal Trade Commission to Takamine Laboratory, Inc., dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 219." (*See Exhibits, Vol. I, page 533.*)

License No. 3 (Patent) issued by the Federal

Trade Commission to Farbwerke-Hoechst Company, dated November 26, 1917, received in evidence and marked "Plaintiff's Exhibit No. 220." (*See Exhibits, Vol. I, page 533.*)

License No. 3 (a) issued by the Federal Trade Commission to Farbwerke-Hoechst Company, dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 221." (*See Exhibits, Vol. I, page 534.*)

License No. 4, issued by the Federal Trade Commission to Farbwerke-Hoechst Company, dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 222." (*See Exhibits, Vol. I, page 535.*)

License No. 5, issued by the Federal Trade Commission to Rector Chemical Company, Inc., dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 223." (*See Exhibits, Vol. I, page 535.*)

License No. 7 (Patent) issued by the Federal Trade Commission to Pacific Flush Tank Company, dated December 17, 1917, received in evidence and marked "Plaintiff's Exhibit No. 224." (*See Exhibits, Vol. I, page 536.*)

License No. 8 Arsephenamine, issued by the Federal Trade Commission to Diarsenol Company, Inc., dated January 12, 1918, received in evidence and marked "Plaintiff's Exhibit No. 225." (*See Exhibits, Vol. I, page 543.*)

License No. 8 (d) (Patent) issued by the Federal Trade Commission to Diarsenol Company, Inc., dated March 4, 1918, received in evidence and marked "Plaintiff's Exhibit No. 226." (*See Exhibits, Vol. I, page 544.*)

License No. 9 (Patent) issued by the Federal Trade Commission to The Abbott Laboratories, Chicago, Illinois, dated January 10, 1918, received

in evidence and marked "Plaintiff's Exhibit No. 227." (*See Exhibits, Vol. I, page 545.*)

License No. 10 (Patent) issued by the Federal Trade Commission to Lembcke, Von Bernuth Company, Incorporated, dated January 17, 1918, received in evidence and marked "Plaintiff's Exhibit No. 228." (*See Exhibits, Vol. I, page 545.*)

License No. 12, issued by the Federal Trade Commission to The Calco Company, dated February 18, 1918, received in evidence and marked "Plaintiff's Exhibit No. 229." (*See Exhibits, Vol. I, page 548.*)

License No. 13, issued by the Federal Trade Commission to French Battery & Carbon Company, dated February 18, 1918, received in evidence and marked "Plaintiff's Exhibit No. 230." (*See Exhibits, Vol. I, page 548.*)

License No. 15 (Patent), issued by the Federal Trade Commission to The Abbott Laboratories, dated March 23, 1918, received in evidence and marked "Plaintiff's Exhibit No. 231." (*See Exhibits, Vol. I, page 549.*)

License No. 18 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours & Company (Anthracenes), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 232." (*See Exhibits, Vol. I, page 549.*)

License No. 18 (a) (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Hydrosulfites), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 233." (*See Exhibits, Vol. I, page 558.*)

License No. 19 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Indigo), dated January 21,

1918, received in evidence and marked "Plaintiff's Exhibit No. 234." (*See Exhibits, Vol. I, page 558.*)

License No. 20 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Sulphur Dyes), said license being dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 235." (*See Exhibits, Vol. I, page 560.*)

License No. 21 (Patent), issued by the Federal Trade Commission to E. I. Du Pont De Nemours and Company (Azo Dyes), dated January 21, 1918, received in evidence and marked "Plaintiff's Exhibit No. 236." (*See Exhibits, Vol. I, page 561.*)

License No. 22 (Patent), issued by the Federal Trade Commission to Albert B. Moses, dated April 8, 1918, received in evidence and marked "Plaintiff's Exhibit No. 237." (*See Exhibits, Vol. I, page 562.*)

License No. 23 (Patent), issued by the Federal Trade Commission to F. L. Smidth & Company, dated July 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 238." (*See Exhibits, Vol. I, page 563.*)

License No. 24 (Patent), issued by the Federal Trade Commission to E. C. Klipstein & Sons Company, dated April 8, 1918, received in evidence and marked "Plaintiff's Exhibit No. 239." (*See Exhibits, Vol. I, page 563.*)

License No. 27 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc. (Anthracenes), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 240." (*See Exhibits, Vol. I, page 564.*)

License No. 28 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company (Indigo), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 241." (*See Exhibits, Vol. I, page 565.*)

License No. 29 (Patent), issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc. (Sulphur Dyes), dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 242." (*See Exhibits, Vol. I, page 566.*)

License No. 30 (Patent) issued by the Federal Trade Commission to National Aniline & Chemical Company, Inc., dated June 28, 1918, received in evidence and marked "Plaintiff's Exhibit No. 243." (*See Exhibits, Vol. I, page 568.*)

License No. 32 (Patent) issued by the Federal Trade Commission to The Stearns-Roger Manufacturing Company, dated July 16th, 1918, received in evidence and marked "Plaintiff's Exhibit No. 244." (*See Exhibits, Vol. I, page 569.*)

License No. 33 (Patent) issued by the Federal Trade Commission to Merrimac Chemical Company, dated July 16th, 1918, received in evidence and marked "Plaintiff's Exhibit No. 245." (*See Exhibits, Vol. I, page 569.*)

License No. 34 issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 246." (*See Exhibits, Vol. I, page 570.*)

License No. 34 (a), issued by the Federal Trade Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 247." (*See Exhibits, Vol. I, page 571.*)

License No. 35, issued by the Federal Trade

Commission to H. A. Metz Laboratories, Inc., dated July 1, 1918, received in evidence and marked "Plaintiff's Exhibit No. 248." (*See Exhibits, Vol. I, page 571.*)

License No. 36 (Patent) issued by the Federal Trade Commission, to General Ceramics Company, dated July 19, 1918, received in evidence and marked "Plaintiff's Exhibit No. 249." (*See Exhibits, Vol. I, page 572.*)

License No. 38 (Patent), issued by the Federal Trade Commission to E. C. Klipstein & Sons Company, dated August 15, 1918, received in evidence and marked "Plaintiff's Exhibit No. 250." (*See Exhibits, Vol. I, page 573.*)

License No. 39 (Patent), issued by the Federal Trade Commission to Merck & Company, dated September 25, 1918, received in evidence and marked "Plaintiff's Exhibit No. 251." (*See Exhibits, Vol. I, page 579.*)

License No. 42 (Patent), issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 252." (*See Exhibits, Vol. I, page 579.*)

License No. 43 (Patent), issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 253." (*See Exhibits, Vol. I, page 580.*)

License No. 44 (Patent) issued by the Federal Trade Commission to the Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 254." (*See Exhibits, Vol. I, page 581.*)

License No. 46 (Patent), issued by the Federal Trade Commission to the Draeger Oxygen Apparatus Company, dated December 16, 1918, re-

ceived in evidence and marked "Plaintiff's Exhibit No. 255." (*See Exhibits, Vol. I, page 581.*)

License No. 47, issued by the Federal Trade Commission to Reinschild Chemical Company, dated December 31, 1918, received in evidence and marked "Plaintiff's Exhibit No. 256." (*See Exhibits Vol. I, page 582.*)

License No. 48 (Patent), issued by the Federal Trade Commission to Arma Engineering Company, dated January 15, 1919, received in evidence and marked "Plaintiff's Exhibit No. 257." (*See Exhibits, Vol. I, page 583.*)

License No. 50 (Patent) issued by the Federal Trade Commission to The Ault & Wiborg Company, dated February 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 258." (*See Exhibits, Vol. I, page 583.*)

License No. 51 (Patent), issued by the Federal Trade Commission to Central Dyestuff & Chemical Company, dated February 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 259." (*See Exhibits, Vol. I, page 584.*)

License No. 52 (Patent), issued by the Federal Trade Commission to Ultro Chemical Corporation, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 260." (*See Exhibits, Vol. I, page 585.*)

License No. 53 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 261." (*See Exhibits, Vol. I, page 586.*)

License No. 54 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 262." (*See Exhibits, Vol. I, page 586.*)

License No. 55 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 263." (*See Exhibits, Vol. I, page 587.*)

License No. 56 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 264." (*See Exhibits, Vol. I, page 588.*)

License No. 57 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 265." (*See Exhibits, Vol. I, page 588.*)

License No. 58 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 266." (*See Exhibits, Vol. I, page 589.*)

License No. 59 (Patent), issued by the Federal Trade Commission to Consolidated Color & Chemical Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 267." (*See Exhibits, Vol. I, page 590.*)

License No. 60 (Patent) Arsphenamine, issued by the Federal Trade Commission to the Division of Laboratories and Research of The New York State Department of Health, dated March 12, 1919, received in evidence and marked "Plaintiff's Exhibit No. 268." (*See Exhibits, Vol. I, page 590.*)

License No. 61 (Patent), issued by the Federal Trade Commission to Semet-Solvay Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 269." (*See Exhibits, Vol. I, page 591.*)

License No. 62 (Patent) Arsphenamine, issued

by the Federal Trade Commission to Massachusetts State Department of Health, dated March 21, 1919, received in evidence and marked "Plaintiff's Exhibit No. 270." (*See Exhibits, Vol. I, page 592.*)

License No. 63 (Patent), issued by the Federal Trade Commission to Horatio Nelson Fraser, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 271." (*See Exhibits, Vol. I, page 594.*)

License No. 65 (Patent), issued by the Federal Trade Commission to Green & Bauer, Inc., dated March 17, 1919, received in evidence and marked "Plaintiff's Exhibit No. 272." (*See Exhibit's, Vol. I, page 594.*)

License No. 66 (Patent), issued by the Federal Trade Commission to The Sperry Gyroscope Company, dated March 4, 1919, received in evidence and marked "Plaintiff's Exhibit No. 273." (*See Exhibits, Vol. I, page 595.*)

License No. 5 (Copyright), issued by the Federal Trade Commission to The John Crerar Library, dated March 30, 1918, received in evidence and marked "Plaintiff's Exhibit No. 274." (*See Exhibits, Vol. I, page 596.*)

License No. 3 (Trade-mark), issued by the Federal Trade Commission to The Draeger Oxygen Apparatus Company, dated December 16, 1918, received in evidence and marked "Plaintiff's Exhibit No. 275." (*See Exhibits, Vol. I, page 599.*)

Q. 43. Now, Mrs. Wilson, you stated that those were the original entry cards of license fees charged up under the licenses already introduced. Please state, step by step, what procedure was followed as between your office and the Alien Property Custodian's office, when a license was issued and payments made thereunder?

A. When the license was issued by the Federal Trade Commission, the Alien Property Custodian's office was furnished a copy of each license, which contained, of course, the full description of the license, the subject matter, including the rate of royalty and other details; following the transmission of the license, each license required a semi-annual reporting as to gross sales.

MR. KRESEL: May I interrupt a minute. I am sorry, Mrs. Wilson. May I inquire whether this report to the Custodian was in writing, this notice to the Custodian of the issuance of the license, was that in writing?

THE WITNESS: It was a copy of the license with a letter of transmittal in writing.

MR. KRESEL: I now move to strike out the testimony of the witness and the answer to this last question up to this point, upon the ground that it is not the best evidence, on the ground that she is giving the contents of a written instrument.

MR. ANDERSON: Counsel called for the production of those originals, of transmittal, together with the copies of the papers.

MR. KRESEL: I am not calling for anything.

THE COURT: You are at liberty to put it that way, Colonel Anderson, but what the other side is doing is objecting to evidence which they say is manifestly not the best evidence.

MR. ANDERSON: All right, I will take a chance on this and go ahead.

THE COURT: Do you want to put this in?

MR. ANDERSON: I do, sir. I will take a chance on that. Under the modern rules of evidence, we are required to establish merely that a copy was transmitted. Then we will meet the requirement.

THE COURT: You understand, of course, that the same rules apply to that as heretofore.

MR. ANDERSON: I understand, and I am going to take a few chances on it. If this case is going to rest on that ground, it does not interest me anyhow.

THE WITNESS: Will you please repeat that question, Mr. Anderson?

(Q. 43. was repeated by the stenographer as recorded.)

A. (Continuing) The first step was to transmit to the Alien Property Custodian a copy of the original license, accompanied with a letter of transmittal. The license required a semi-annual accounting from the licensee, showing the gross sales under the license, together with the royalty accruing by reason of such sales, the report of sales required by the license was by the Trading with the Enemy Act required to be made direct to the Federal Trade Commission, with a further stipulation in the act that the payments were to be made direct to the Alien Property Custodian who, in turn, was to deposit these payments in the Treasury as a trust fund, against which the owner might ultimately sue. Pursuant to these arrangements, we required from each licensee the regular semi-annual accounting statement. When that was received it was sometimes accompanied, as I have previously stated, by a check drawn to the order of the Alien Property Custodian, in the amount accruing as license royalties. When that report was received by the Commission or by me, I checked over the figures to verify the accuracy; then made the entries in the proper fashion in the file and on the cards which have been produced, and then submitted to the Alien Property Custodian a report form which was partially typed, with blanks to be filled in, showing the amount accruing under the particular license, and other details which were essential for his files. I transmitted this report to the Custodian, and at the same time there

was attached to the report a receipt form. With my letter of transmittal, I asked him when the amount was received by him to send me this formal receipt for the completion of my file. At the same time I directed the licensees, if the check did not accompany the report, to make payment direct to the Alien Property Custodian in the proper amount, also advising me, if necessary, when that payment was made. If the Custodian did not report the receipt in reasonable time, then we would remind him whether or not the payment had been made; if not, following that up by a reminder to the licensee that he was required to make the payment within thirty days after he rendered his report.

Mr. Kresel: Now, if the witness has completed the answer, as I think she has, I now move to strike out the answer upon the ground that it is apparent from it, that she has undertaken to give the contents of written instruments which are the best evidence. She has undertaken to interpret the provisions of the Trading with the Enemy Act. She has undertaken, by her answer, to define the duties of the Alien Property Custodian with reference to the deposit of moneys in the Treasury of the United States as a trust, against which the alien was to have certain rights. She has repeatedly stated that this course of dealing between the two governmental offices was in writing by means of communication sent from one to the other, and none of which have been introduced in evidence, and as to all of which she has undertaken to give secondary evidence.

I ask that the entire answer be stricken out upon the ground that is it incompetent upon the face of it.

Mr. Anderson: To which I wish to reply, that in so far as the witness undertakes to interpret the Trading with the Enemy Act and the duties

of the respective officers thereunder, it is conceded that it has no binding effect either upon this Court or any other Court or upon any of the parties, that being a question for the Court; but that the witness may refer to these matters as her understanding of the act, and as a means to connect up the various courses of dealing. If the interpretation of the act given by her is wrong, it has no effect. It is merely an introduction to the various acts which she herself performed in relation to this matter, and therefore in the orderly production of evidence can do no harm, and means nothing except that it is for the purpose of connecting up the statements as to which she can testify, and is admitted to mean nothing more than that.

Q. 44. Mrs. Wilson, it appears that from these licenses which I have introduced in evidence, that there was an initial license fee charged by the Commission, of $100 on each license. I would ask you what was done with that $100 as it passed through your hands or your office?

A. The $100 license fee charged by the Commission was in some instances subject to refund in whole or in part. Consequently this fund was deposited with the Treasurer as a separate fund, against which we might make any necessary refunds, and the un-refunded balance is still with the Treasurer of the United States.

Q. 45. That was collected by the Commission itself?

A. Collected by the Commission itself.

Q. 46. And there was kept in the separate fund a deposit by the Commission to its credit with the Treasurer?

A. To its credit with the Treasurer.

Q. 47. You say you have handled this business of

the licensing under this act since its inception, either as chief of the office or directly in charge, in another capacity?

Mr. Kresel: We did not so understand the witness to say. I understood she had charge of the records, not that she was handling the licenses. I did not understand her to say that.

Q. 48. Was it a fact that you handled that work?

A. I did not say that I handled the licenses themselves.

Mr. Kresel: That was the Colonel's question.

The Witness: No, I handled the reports and the files and the accounting end from the beginning, but so far as the drawing of the licenses was concerned, not until a little after the passage of the act, but I was managing clerk for the division when I went in. The Federal Trade Commission had other duties to perform than just the issuance of these licenses, and I went in to handle other matters and in addition to supervise the force of the Enemy Trade Division. In that capacity I handled the files and records and the reports; so I did not actually draw the licenses at the very beginning.

The Court: Does not that answer your question?

Mr. Kresel: Does that answer your question?

Mr. Anderson: Yes, that answers the question.

Q. 49. Did you have charge of the files continuing these licenses?

A. Absolutely.

Q. 50. You handled the entire work of the Commission with respect to these licenses except drawing them and executing them, did you not?

A. Yes.

Q. 51. How many assistants did you have in tha work?

A. Well, I could not answer that offhand, becaus —

Q. 52. I mean work now relating to this particula matter under inquiry, referred to in those cards?

A. Well, at what particular time?

Q. 53. You can state any time that you please, i you can remember?

A. In 1917, when the act was passed and we wer very busy, we had quite a large force because, as stated a moment ago, we did other things than jus issue the licenses, from time to time, and more par ticularly after the Alien Property Custodian's seizure of the patents in 1919 and the applications for license became very much less frequent, of course, the force was decreased in size until for the last three year I have handled the work entirely alone with the ex ception of the assistance of one clerk.

Q. 54. What was the expense of your office fo handling this business in the fiscal year 1918, endin June 30, 1919?

Mr. Kresel: I submit, your Honor, that thi witness has not been shown to be in possession o any facts which would enable her to make any an swer to that question. I suggest that eithe Colonel Anderson elicit from her information o that subject, and see that she is qualified, or tha I be permitted to do that; I do not care which.

Q. 55. Have you—

The Court: Is the last question withdraw for the present?

Mr. Anderson: For the present, yes, sir.

Q. 56. Have you a copy of the official report o the Federal Trade Commission, annual report for th fiscal year ending June 30, 1920?

A. I have.

Q. 57. Will you produce it?

A. (Handing to counsel.)

MR. ANDERSON: I now wish to introduce in evidence an extract from the annual report of the Federal Trade Commission for the fiscal year ended June 30, 1920, bearing the imprint of the United States, of the Government printing office at Washington, addressed to the Senate and House of Representatives, dated September 15, 1920. The portion which I wish to read is one paragraph from page 172.

MR. KRESEL: The one which you mark?

MR. ANDERSON: Yes, sir, that one paragraph.

MR. KRESEL: Is it the position of the Government that this is admissible as proof of the facts therein contained?

MR. ANDERSON: Yes, sir.

MR. KRESEL: Upon the ground that it is an official report of the Federal Trade Commission?

MR. ANDERSON: Yes, sir.

MR. KRESEL: I simply wanted to understand your position. The paragraph is short and I wish you would read it instead of just marking it.

MR. ANDERSON: I will.

MR. KRESEL: We make the same objection that we have made to this full line of testimony.

THE COURT: Do you object to this method of proving the facts; that is, if the facts are relevant?

MR. KRESEL: No, your Honor, I do not. I simply wanted to know what Colonel Anderson's theory was in introducing this evidence. As I understand it now, the position he takes is that that statement appearing in an official report, he has a right to put in proof of the facts therein stated. Have I stated your position correctly?

MR. ANDERSON: Yes.

THE COURT: And you have no objection on that score?

MR. KRESEL: I do not object on that score.

THE COURT: In the absence of objection it may be introduced, and by agreement the pertinent portion from your standpoint, Colonel Anderson, may be read upon the record.

MR. ANDERSON: Yes, and the document not identified or marked. The paragraph which I wish to read at this time from Page 72 is as follows:

> "The grand total of royalties reported to date under all Federal Trade licenses amounts to $833,223.30, of this amount $480,726.18 having accrued under patents; $351,838.24 under trade-marks; and $668.88 under copyrights. Total royalties during the fiscal year ended June 30, 1920, aggregated $188,957.61, itemized as follows: $181,531.55 under patents; $7,297.88 under trade-marks; and $128.18 under copyrights.
>
> In this connection it may be added that the total expense incurred by the Enemy Trade Division of the Commission in its administration of the act amounted during the fiscal year to only $3,400."

MR. KRESEL: Lest there be misunderstanding, I think Colonel Anderson will concede that the figures given therein as to the amount of royalties received are royalties received on all licenses issued and not simply on those that we are inquiring into.

MR. ANDERSON: I want to make it quite clear, that the Government's position may not be misunderstood, that the question of the amount of royalties accrued or collected on the particular patents, trade-marks and copyrights here involved will be otherwise proved. The chief purpose of the introduction of the statement here was to show

the amount of business done and the cost thereof. But that included other licenses than the particular licenses here involved. I will state to the Court that there were certain other documents that I wish to introduce at this point bearing upon this matter, which involved such a large volume of documentary evidence that they were not brought over this morning. So I would like to turn the witness over for cross-examination now with leave to introduce those documents after luncheon.

MR. KRESEL: I am very pleased to say I have no questions to ask Mrs. Wilson.

MR. ANDERSON: You may stand aside, Mrs. Wilson, and I will put in the documents.

(Witness excused.)

MR. ANDERSON: I am sorry those other documents are not here, and that evidence relates to another matter that I want to take up now. They will be here after lunch.

THE COURT: Have you another witness we can go ahead with now?

MR. ANDERSON: Yes.

Federal Trade Commission cards received in evidence and marked "Plaintiff's Exhibits Nos. 276 to 335, incl. *(See Exhibits, Vol. I, pages 605 to 682, incl.)*

HARRY W. SCHMITS.

HARRY W. SCHMITS, a witness called on behalf of the plaintiff, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state your name and place of residence?

A. Harry W. Schmits, Washington, D. C.

Q. 2. What is your present position or employment?

A. Accountant for the Alien Property Custodian.

Q. 3. Are you in the accounting service?

A. Yes, sir.

Q. 4. Of the Alien Property Custodian?

A. Assistant to the Chief of the Division of Accounts.

Q. 5. Assistant to the Chief of the Division of Accounts of the Alien Property Custodian?

A. Yes, sir.

Q. 6. How long have you been there?

A. Since November 11, 1917.

Q. 7. Have you occupied your present position since that time; if not, state what has been your relation to this work?

A. The entire time.

Q. 8. The entire time?

A. Yes, sir.

Q. 9. I requested you to produce the original individual trust accounts of the Alien Property Custodian, showing the amounts paid to the Alien Property Custodian under licenses issued by the Federal Trade Commission and under contracts seized by the Alien Property Custodian? Have you got those original sheets with you?

A. Yes, sir.

Q. 10. Will you produce them?

A. (Hands counsel.)

Q. 11. Do you identify these sheets which you have now handed me as original records of the Alien Property Custodian?

A. Yes, sir.

Q. 12. And taken from the original accounts under your charge?

A. Yes, sir.

MR. ANDERSON: I would simply ask that these sheets be marked for identification for the use of a subsequent witness testifying from the original.

Not put in evidence, because I am not going to burden the record with them. Will that be satisfactory?

THE COURT: They will be so marked.

MR. ANDERSON: Just mark them for identification.

Marked "Plaintiff's Exhibit A for Identification" 6-22-23.

Q. 13. I have asked you to produce from the records of the Alien Property Custodian the original slips and tickets upon which the entries contained in the numerous ledger sheets which you have produced here and identify were made. Have you got those records?

A. Yes, sir.

Q. 14. Are they the records that you now hand me?

A. Yes, sir.

Q. 15. Then these are the original slips.

A. Yes, sir.

Q. 16. Or office records, from which the original entries on those sheets which you have already identified from the office of the Alien Property Custodian were made; is that true?

A. Yes, sir.

MR. ANDERSON: I would ask that this bunch of papers be merely identified as B, for the use of the subsequent witness.

THE COURT: It will be so marked.

(Marked Plaintiff's Exhibit B for Identification, 6-22-23.)

Q. 17. I notice that there are certain slips which appear to be deposit slips of the Treasurer of the United States for moneys deposited by the Alien Property Custodian, among the papers last mentioned and identified as B by you. Does that contain the Treasury deposit slips for all moneys deposited by the Alien

Property Custodian under these licenses and contrac

A. No, there were a few missing. We did
have sufficient time in order to get out all of the
so we produced an affidavit from the Treasury
partment covering those that are missing.

Q. 18. Will you hand me that affidavit or
davits?

A. Yes, sir (handing to counsel).

MR. ANDERSON: If your Honor please, the w
ness has handed me two affidavits purporting
be made by M. J. O'Reilly, Chief of the Divis
of Bookkeeping of the Treasury Department, w
statements annexed such as he has indicated;
I would ask that they be identified, along w
the other papers, as filling out the record.

THE COURT: Those affidavits were made wh
Were they made for this case?

MR. ANDERSON: Yes, sir.

THE COURT: Were they made for the purp
of this case or were they made in connection w
the transaction of business between the two offic

Q. 19. May I ask whether these affidavits w
made and delivered to you for the purposes of t
case of showing the explanation of the absence of th
papers?

A. They were made for the purposes of this ca

MR. ANDERSON: Do you object to that,
Kresel?

MR. KRESEL: You are not offering them, I
derstand. You are simply asking that they
marked for identification.

MR. ANDERSON: That is all at the present ti

MR. KRESEL: I can not prevent you fr
marking anything for identification.

THE COURT: I got the impression you w
offering them.

MR. ANDERSON: No, sir.

(Marked Plaintiff's Exhibit C for Identification, 6-22-23.)

MR. ANDERSON: That is all, Mr. Kresel.

MR. KRESEL: No questions.

(Witness excused.)

MR. ANDERSON: The next witness, your Honor, will be Mr. Storck who will be recalled for examination on all these papers. I understood your Honor to say you wanted to adjourn at quarter to twelve and I did not think there was any use of calling him for one or two questions.

THE COURT: We will take a recess until 1:30 P. M., Eastern Standard Time.

AFTER RECESS

MR. ANDERSON: If your Honor please, we now desire to offer in evidence a series of documents, the purport of which I think it is probably better for me to explain in advance.

Your Honor will recall that on Friday last, when Mr. Storck was testifying, the evidence as to the revenue accrued or derived from the patents licensed by the Federal Trade Commission and subsequently assigned to the defendant was questioned, on the ground indicated this morning that the Federal Trade Commission licenses contained a provision giving to the licensee the right to use any other patents, alien patents, I should say, which the Federal Trade Commission was authorized under the act to license, which were essential to the operation of this process covered by the patents actually named in the license. And it was contended that the defendant could not be charged, as evidence even of the value of the patents, with this amount of revenue, in view of the fact that it had not been and probably could not

be segregated so as to show from what patents the revenue was derived.

I have here sixty-two Bills of Complaint filed by The Chemical Foundation, Incorporated, about June, 1922, in various United States District Courts of the country, the purport of which bills is to recover the accrued royalties under licenses issued by the Federal Trade Commission on the patents to which I have referred.

I shall first offer in evidence, in order that I may speak of it more definitely, a certified copy of a Bill of Complaint filed in the District Court of the United States for the Eastern District of Pennsylvania by The Chemical Foundation, Incorporated, as plaintiff, against the National Aniline & Chemical Company, Inc., a corporation, and Frank White as Treasurer of the United States, defendants, together with the exhibits with said Bill of Complaint, the same being a duly certified copy thereof.

THE COURT: And to show what, Colonel Anderson?

MR. ANDERSON: Well, I offer this, the same to be identified and read in evidence as Plaintiff's Exhibit No. 336. As soon as I have that offered, I will explain the parts to which I wish to direct your Honor's attention.

THE COURT: The general purpose is what?

MR. ANDERSON: To show that The Chemical Foundation in each of these bills, which cover all the patents assigned, taken together, under which license has been issued by the Federal Trade Commission, claims the accrued royalties from the date of transfer at least under all the patents mentioned and described in those bills of complaint, which by reference to the numbers are the patents mentioned and described in the exhibit to

the Bill of Complaint under which licenses have been issued. In addition thereto the bill claims all the royalties accrued under those licenses, and I wish to read to your Honor the provision of the bill to that effect.

THE COURT: That is from the time of the making of the license by the Federal Trade Commission?

MR. ANDERSON: No, sir. The bill, I take it, sets forth a suit to recover the royalties from the time that the patents were transferred to The Chemical Foundation under those licenses, copies of which are attached to these bills being for the life of the patents, and they acquired the patents subject to that license unless it was surrendered by the licensee. After describing by number the specific patents mentioned in the license and attaching as exhibits copies of said patents and setting up the royalties claimed and the royalties accrued under such license, Article 9 of the Bill contains this clause, which reads as follows:

> "In addition to the inventions covered by the letters patent enumerated in paragraph III hereof, there were licensed by the aforementioned license such other inventions owned or controlled by an enemy or an ally of an enemy as might be found desirable in order to further the purposes and intent of said license, as more particularly set forth therein,"

That is the clause, your Honor will remember, was referred to.

> "and plaintiff is the owner of divers inventions covered by United States Letters Patent other than those specified in said paragraph III, which at divers times were determined by the Alien Property Custodian to be enemy or ally of enemy owned and as such were seized and sold to the plaintiff, and which may have been used by the defendant licensee as

> desirable for the furtherance of the intent and purposes of said license. Plaintiff is not informed as to which, if any, of said additional Letters Patent owned by it were so used by the defendant licensee, nor as to the nature or extent of such use; but such Letters Patent, if any there be, are hereinafter referred to as 'additional licensed patents.' With reference to each of such additional licensed patents, each and every the allegations so far as applicable of paragraph III hereof, and each and every the allegations so far as applicable of Paragraph VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein."

Those are the paragraphs alleging their rights to the royalties under those licenses.

> "By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the 'owner' of Letters Patent under Section 10 of the Trading with the Enemy Act."

In other words, there is a declaration in the suit against the Treasurer of the United States that the plaintiff here is not only the owner of all the patents specifically licensed, but is owner of all the patents which by virtue of the general clause the licensee would be entitled to use, and is therefore entitled to recover on its theory of this Bill all of the accrued royalties by virtue of its acquisition of all the patents which could have been used or were authorized to have been used by virtue of the premises of such license whether specifically included in the license or not, and it will be our contention, of course, that that is conclusive as to the question of the right to use the

evidence of accrued royalties on all these patents under those Federal Trade Commission licenses as against the defendant corporation, and removes the objection to the evidence which is indicated.

MR. KRESEL: May I reply, your Honor?

THE COURT: Yes.

MR. KRESEL: Of course, if Colonel Anderson thinks that what he has just read removes the objection, why, that is up to him. Of course, I do not agree with his construction of the allegation that he has read from the Complaint, but what he has read to my mind simply gives point to the objection we have raised. It now appears from the allegation in this Bill that it is a fact that these licenses covered not only the specific numbered patents, but all other alien patents that could be used, and this Bill does not in any way assist in segregating the lump amount return as royalty as between the specifically named patents and the other patents so described in general terms, and that was the point that I raised. I do not see that this Bill in any way meets that objection, but if Colonel Anderson thinks it does, why, he may proceed on that theory.

If I understand Colonel Anderson, he is now offering that Bill of Complaint; is that correct?

MR. ANDERSON: Yes, sir.

MR. KRESEL: We object to it upon the ground that it is immaterial, irrelevant and incompetent; that it in no way substantiates the exhibit which was put in upon the testimony of Mr. Storck, which it is sought to substantiate by that Bill. That is all I want to say now.

MR. ANDERSON: I only wish, in reply, to say that these patents were sold to The Chemical Foundation in lump. It has been proved here that the purchase price was not allocated to any

patent but that they were sold all together. Now, if it appears here that all these patents were at that time yielding or capable of yielding a revenue, it goes to the value of the property sold and there is no obligation on the plaintiff to segregate that to each of these patents, because we are not suing for the recovering of any individual patents, but for the cancellation of the entire sale.

MR. KRESEL: But the difficulty is, Colonel, that that statement in the license is not "All other enemy-owned patents conveyed to The Chemical Foundation." It is, "All other alien enemy patents." And for all that you have shown now, all the revenue return may have been earned upon patents that were never conveyed to The Chemical Foundation.

THE COURT: May I make this inquiry, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE COURT: The patents that were conveyed by the Government to The Chemical Foundation may be ascertained from the assignments which you annexed to your Bill and the corrections made by agreement of counsel.

MR. ANDERSON: Yes, sir.

THE COURT: Now then, do I understand that the exhibits now offered by you disclose whether or not the royalties received by the Government through the Federal Trade Commission licenses were received on account of the patents so assigned; and if so, what part thereof?

MR. ANDERSON: Yes, sir. My position is in the first place that the evidence already shows here that these gentlemen claimed to have acquired all of the enemy-owned patents relating to the chemical and dyestuffs industry. That would in-

clude any patents that could be appropriately used for the purpose of these patents so described.

But here they claim in a formal plea that all of the patents which could have been used under that general clause of the license are in fact owned by The Chemical Foundation; and they can not deny that after putting it all in a pleading. At least, that is evidence from their own mouths over their own signature and seal.

I will not argue at this time the legal effect of all that. It goes into quite a question. But they have foreclosed themselves from asserting as against the Government of the United States certainly—whether they can do it against other people, I question—that they do not own every patent which could have been used under these licenses which were issued by the Federal Trade Commission.

THE COURT: You do not take that position, do you? You do not concede that?

MR. ANDERSON: I do not concede, but I claim that as to them, every patent which could have been used under these Federal Trade Commission licenses was covered by these assignments. But I do not claim they are the only ones: It is a question that any patents which could have been used under these licenses could have been covered by the assignments to The Chemical Foundation.

THE COURT: Does that appear as a fact?

MR. ANDERSON: We have a description of the actual patent licenses. You check the two against each other and they verify. But this allegation on their part over their signature and seal that they are the owners of all patents that could have been used under the Federal Trade Commission license is conclusive as to that, on that subject.

MR. KRESEL: Colonel, I do not read any such

allegation that we are the owners of all patents. Won't you read that again, please.

MR. ANDERSON: I will read it, but suggest that it be not put on the record again (reading).

With respect to that allegation, in brief they say they seize from time to time patents which could have been used under the terms of that license sold to them. (Continues reading.)

What are the additional Letters Patent. We describe them by name. With reference to such additional licensed patents, which, of course, include all the patents that could have been used under that license—

MR. KRESEL: No, it includes only such as we own.

> MR. ANDERSON: "With reference to each of such additional licensed patents, each and every the allegations so far as applicable of paragraph III thereof, and each and every the allegations so far as applicable of paragraph number VI hereof, are hereby by reference repeated and alleged as fully as though incorporated herein. By reason of the premises the plaintiff became and now is the sole owner of the said additional licensed patents and the inventions and discoveries covered thereby, and of every right, title and interest therein, including the rights inuring to the 'owner' of Letters Patent under Section 10 of the 'Trading with the Enemy Act.'"

I do not suppose distinguished counsel and myself will ever agree as to the meaning of that language.

MR. KRESEL: I think we will.

MR. ANDERSON: I do not think we will.

MR. KRESEL: I think we will.

MR. ANDERSON: My construction of that language, and I do not think it is reasonably capable

of any other construction, is that these gentlemen were confronted with a proposition that they were suing to recover the license fees accrued under this license

They would be confronted with exactly the same proposition with which they tried to confront us the other day—that you can not recover under those licenses because it does not appear that all this money accrued under licenses which you caimed to own. Therefore they put in, and truthfully so, I think, because they own all the enemy-owned dyes and dyestuff patents, formerly enemy-owned, this omnibus clause which states in effect that all of the patents which could have been used by the licensee under those patents are herein described as additional licensed patents and that they are the owners of those additional patents, and if that is true it does not matter whether the royalty was earned under the patents described or under the additional patents owned by them, under their theory of the law they are entitled to the royalty. It is on that question that we introduced this evidence, although there are some other aspects of the case to which it is applicable, but which are not necessary at this time, they aid us in other phases of the case.

Mr. Kresel: I predict, if your Honor please, that Colonel Anderson and I will agree on this language. It is a matter that I think the Court might as well understand now as when we come to the final argument. In the first place, may I take the liberty of handing up what Colonel Anderson has been reading from. It is this paragraph marked "X." (Hands Court.) I will take another copy of that while I relieve myself of some argument.

MR. ANDERSON: You can keep yours and I will hand up to the Court the printed copy.

MR. KRESEL: It is all right, I have a copy.

THE COURT: You may put of record your position and then I will rule on it.

MR. KRESEL: Your Honor will see that the allegation starts out by stating that the license covered not only the Letters Patent which are enumerated in the license, but other licenses owned or controlled, or other patents, by an enemy or an ally of an enemy. Let us stop there. The allegation is not that it covered the specific numbered patenst and other patents owned by the Chemical Foundation, but other patents owned by an enemy or an ally of an enemy. That is the first allegation of this paragraph. Then it goes on to say that the plaintiff is the owner of diverse inventions covered by United States Letters Patent other than those specified in paragraph III. It does not say that it is the owner of all alien enemy patents, it says that it is the owner of certain specified patents—those specified in the Bill and others. Then it goes on to say that those other patents so owned by The Chemical Foundation were at diverse times determined by the Alien Property Custodian to be enemy or ally of enemy-owned and as such were seized and sold to the plaintiff, and which may have been used by the defendant.

In other words, the allegation is not only did the licensee use the specified patents, but he may have used some other patents owned by The Chemical Foundation. The plaintff is not informed as to which, if any, of said additional Letters Patent. When they talk of additional Letters Patent there, they do not refer to all other enemy or ally or

enemy patents, they speak there of additional Letters Patent owned by The Chemical Foundation in addition to those specifically described by numbers. And then it says that we are not informed as to the nature or extent of such use, but such Letters Patent, if any there be, are referred to hereafter as additional Letters Patent. That makes it perfectly clear that the phrase "additional Letters Patent" refers to additional Letters Patent owned by the Foundation. Not the broad class which is included in the license as other enemy or ally of enemy-owned patents, and it is as to those additional patents owned by The Chemical Foundation that the plaintiff asks relief in this Bill.

To make perfectly plain that is all that was meant—and I think Colonel Anderson must agree with me on that—I direct your Honor's attention to the prayer of this Bill. The second prayer reads as follows:

> "That said defendant, E. I. du Pont de Nemours and Company be required to make full and true discovery of its operations under said license and its profits thereunder with respect to the Letters Patent involved in this proceeding from and after the time plaintiff became the owner thereof, as aforesaid, including the exact specification of the Letters Patent under which such operations were conducted."

In other words, we are seeking a discovery here to find out what Letters Patent were being used. If we were claiming that we were entitled to royalties on all patents granted there would be no point in asking for any discovery here. I think it is time that Colonel Anderson agreed with me.

MR. ANDERSON: I do not.

MR. KRESEL: Of course, if he does not we will pass it.

MR. ANDERSON: Why, certainly not. There is nothing that you have said which in the slightest way changes my view.

MR. KRESEL: Then let us pass on. I am sorry.

THE COURT: Do you want me to put an expression on the record as an expression of my views? It depends on you whether you want any expression of views at this time.

MR. ANDERSON: That is for your Honor to decide at this time, sir.

THE COURT: Very well. You may put it of record.

MR. KRESEL: This is admitted under our objection, is it, your Honor?

THE COURT: Yes.

Received in evidence and marked "Plaintiff's Exhibit No. 336." (*See Exhibits, Vol. I, page 685.*)

MR. ANDERSON: If the Court please, I desire to offer in evidence the sixty-one additional Bills of Complaint, with the exhibits accompanying the same, which have been duly certified and which I will identify as follows:

The Southern District of New York, the following Bills of Complain: The Chemical Foundation, Inc., vs. Takamine Laboratory, Inc.

Received in evidence and marked "Plaintiff's Exhibit No. 337." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

MR. ANDERSON: The Chemical Foundation, Inc. vs. Rector Chemical Company, Inc.

Received in evidence and marked "Plaintiff's

Exhibit No. 338." (*See Exhibits, Vol. I, page 692.*)

MR. ANDERSON: I will just read these and I will ask that Mr. Galloway and Mr. Mahaffy arrange to put the appropriate numbers on.

MR. KRESEL: If you have a list there, would it not be just as well to hand the list to the Clerk?

MR. ANDERSON: Yes, I will hand the list to the Clerk and he and Mr. Galloway can arrange to put the appropriate numbers on afterwards.

MR. KRESEL: And the Clerk will assign a separate number, as I understand it, to each one of those bills.

MR. ANDERSON: There are four bills of complaint in the District of Delaware. The original bills are produced in Court, by the Clerk, and I ask leave to substitute in place thereof copies of such bills, and with that statement I will regard all these bills, with exhibits therewith, as offered in evidence, and your Honor rules that they be admitted and their identification numbers will be put appropriately on them.

MR. KRESEL: To the offer of each of those bills, your Honor, we raise the objection of immateriality and irrelevancy, and all the other objections that we have heretofore raised.

THE COURT: I think your objections are well taken, and the bills are admitted only under the general rule that we have adopted for this case.

(The following bills of complaint were received in evidence and respectively marked as indicated):

SOUTHERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. Bernuth Lembeke Co., Inc., as "Plaintiff's Exhibit No.

339." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 340." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 341." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 342." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 343." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. General Ceramics Co., as "Plaintiff's Exhibit No. 344." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 345." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 346." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 347." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. C. Klopstein & Sons Company, as "Plaintiff's Exhibit No.

348." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Merck & Co., as "Plaintiff's Exhibit No. 349." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 350." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 351." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 352." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corp., as "Plaintiff's Exhibit No. 353." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Reinschild Chemical Co., as "Plaintiff's Exhibit No. 354." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Ultro Chemical Corp., as "Plaintiff's Exhibit No. 355." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chemical Company, as "Plaintiff's Exhibit No. 356." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consoli-

dated Color & Chemical Company, as "Plaintif
Exhibit No. 357." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 358." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 359." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 360." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 361." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

The Chemical Foundation, Inc., vs. Conso
dated Color & Chemical Company, as "Plaintif
Exhibit No. 362." (*Not printed.* See stipulati
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
683.)

EASTERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. H. A. Me
Laboratories, Inc., as "Plaintiff's Exhibit N
Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, pa*
Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Me

Laboratories, Inc., as "Plaintiff's Exhibit No. 364." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. H. A. Metz Laboratories, Inc., as "Plaintiff's Exhibit No. 365." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Ultro Chemical Corporation, as "Plaintiff's Exhibit No. 366." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Horatio Nelso Frazer & Chemical Refining Syndicate, as "Plaintiff's Exhibit No. 367." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

WESTERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. Diarsenol Company, Inc., as "Plaintiff's Exhibit No. 368." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 369." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 370." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chemical Co., as "Plaintiff's Exhibit No. 371." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National

Aniline & Chemical Co., as "Plaintiff's Exhibit No. 372." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

NORTHERN DISTRICT OF NEW YORK.

The Chemical Foundation, Inc., vs. Semet-Solvay Company, as "Plaintiff's Exhibit No. 373." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

DISTRICT OF NEW JERSEY.

The Chemical Foundation, Inc., vs. Takamine Laboratory, Inc., as "Plaintiff's Exhibit No. 374." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. C. Klipstein & Sons Co., as "Plaintiff's Exhibit No. 375." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. General Ceramics Company, as "Plaintiff's Exhibit No. 376." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 377." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 378." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 379." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit

No. 380." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 381." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 382." (*Not printed.* See stipulation Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Consolidated Color & Chem. Co., as "Plaintiff's Exhibit No. 383." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

EASTERN DISTRICT OF PENNSYLVANIA.

The Chemical Foundation, Inc., vs. Schamberg et al (Dermatological Institute), as "Plaintiff's Exhibit No. 384." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 385." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 386." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. National Aniline & Chem. Co., Inc., as "Plaintiff's Exhibit No. 387." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

WESTERN DISTRICT OF PENNSYLVANIA.

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 388." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 389." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 390." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. American Atmos Corporation, as "Plaintiff's Exhibit No. 391." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

DISTRICT OF DELAWARE.

The Chemical Foundation, Inc., vs. The Ault & Wiborg Company and Cincinnati Chemical Works, Inc., as "Plaintiff's Exhibit No. 392." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. Horatio Nelson Frazer & Chemical Refining Syndicate, as "Plaintiff's Exhibit No. 393." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. I. du-Pont de Nemours & Co., as "Plaintiff's Exhibit No. 394." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. E. I. du-Pont de Nemours & Co., as "Plaintiff's Exhibit No. 395." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

SOUTHERN DISTRICT OF OHIO.

The Chemical Foundation, Inc., vs. The Ault & Wiborg Company and Cincinnati Chemical Works, Inc., as "Plaintiff's Exhibit No. 396." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

NORTHERN DISTRICT OF ILLINOIS.

The Chemical Foundation, Inc., vs. Pacific Flush Tank Co., Inc., as "Plaintiff's Exhibit No. 397." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. The Abbott Laboratories as "Plaintiff's Exhibit No. 398." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

The Chemical Foundation, Inc., vs. The Abbott Laboratories as "Plaintiff's Exhibit No. 399." (*Not printed.* See stipulation, Plaintiff's Exhibit No. 661. *Exhibits, Vol. I, page 683.*)

MR. KRESEL: Colonel Anderson, while you are waiting, I am reminded that on last Friday, when you asked us about these bills that you have just put in, I made the suggestion, to which you acceded, that if those were to go in at all, that the other set of bills in similar suits, those brought by the Alien Property Custodian being one set, and those brought by the alien enemy being another set, should likewise go in, and I would now request that you do put those in.

MR. ANDERSON: I should be very glad to comply with the request of counsel, but I can not see what possible reference these other bills can make or what bearing they can have to the purposes for which this evidence is introduced. This is purely a question between the Government and the Chemical Foundation, and it is not a question of whether suits have been brought. That is admitted in the answer; but it is introduced for the purpose of showing the pleadings in those cases.

THE COURT: That is under your control, Colonel Anderson.

MR. ANDERSON: Therefore I could not do that at this stage.

MR. KRESEL: I am simply recalling what I understood to be an agreement with counsel.

MR. ANDERSON: No, I did not agree. I said I had no objection to you putting them in, if they were admissible. I would object to their admissibility.

THE COURT: Will it develop at any stage of your case, Colonel Anderson; if so, I would like to ask you the theory of any bill brought by the Government interests. If it is wholly irrelevant, do not bother to tell me, but I have been trying from time to time as I have thought of it—I had no knowledge of it; I was wondering what the basis of such a bill could be.

MR. ANDERSON: I understand, though I speak only from hearsay, that certain bills have been filed by persons claiming to be former owners, to recover licenses under Section 10. I can not see that they could have any possible reference to the issues in this case or any possible relevancy.

THE COURT: Then, that will not be disclosed by you.

MR. KRESEL: May I suggest, if your Honor will permit me, as to the relevancy of it, it is this: All of this evidence is being introduced by the Government on the question of value. Now, if it is made to appear that these moneys which are royalties under licenses have not only not been paid to the Chemical Foundation, but are being claimed by the Alien Property Custodian himself on one side, and by the alien enemy owner on the other, it is bound to have an effect as to whether the amount of money has any bearing upon the question of value.

THE COURT: I understand your contention.

MR. ANDERSON: That would be a defense of course. I will recall Mr. Storck to the stand.

GEORGE W. STORCK resumed the stand.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 271. You are the same Mr. Storck who was on the witness stand last Friday, are you not?

A. Yes, sir.

RDQ. 272. At that time I introduced in evidence your statement entitled "Statement of Money's Received by the Alien Property Custodian on account of the following described contract rights assigned by the A. P. C. to the Chemical Foundation," and it was marked Plaintiff's Exhibit No. 194. You recall that paper?

A. Yes, sir.

RDQ. 273. I then requested you to make an examination of the original records of the Alien Property Custodian's office to show among other things the exact date on which the payments there listed by you were made to the Alien Property Custodian under these contracts?

A. Yes, sir.

RDQ. 274. Have you made such examination of the original records?

A. I have.

RDQ. 275. Were you in Court this morning when Mr. Schmits produced and identified original records of the office of the Alien Property Custodian, which were identified as A and B?

A. Yes, sir.

RDQ. 276. Can you now examine those original records as presented by Mr. Schmits and tell me when the various payments listed on your Exhibit No. 194 were made to the Alien Property Custodian?

A. I have already examined them.

RDQ. 277. You have?

A. Yes.

RDQ. 278. Have you made up a statement giving that information from the original records?

A. Yes, sir.

RDQ. 279. I requested you also to afford to the accountant for the defense abundant opportunity to examine those records with you or separately as he desired. Has that opportunity been afforded?

A. Yes, sir.

RDQ. 280. Has he been with you when you checked these records?

A. He was.

RDQ. 281. Who was this gentleman?

A. Mr. Dold.

RDQ. 282. Do you know what his connection is?

A. Yes, sir; he is an accountant for Pasley & Conroy, New York, Certified Public Accountants.

RDQ. 283. And he has been referred to you by the defendants here or their counsel, as their accountant, has he, to do this work?

A. That is correct.

RDQ. 284. Now, Mr. Storck, I will be glad if you would present any statement you have showing the dates of payment and any other data in addition to that shown by your Exhibit No. 194, as taken from the original records produced here, referring to those records if necessary to verify the same?

MR. KRESEL: All this, your Honor, is under our objection that I raised to this witness's testimony before.

THE COURT: Yes.

A. I prepared a statement which showed the original trust number, to whom the license was issued, the date the patent issued, the patent number, the date of the contract, the date of the expiration of the contract, the date received by the Alien Property Custodian, the date of the deposit by the Alien Property Custodian with the United States Treasurer, remarks or affi-

davits of the United States Treasurer, the date of the Certificate of Deposit from the United States Treasurer, the number of the Certificate of Deposit and the amounts; and I have tied those amounts in with my statement.

RDQ. 285. Number 194?

A. No. 194, Government's exhibit.

MR. ANDERSON: I would like to ask if counsel will permit the witness to refer to these original records without their being introduced in evidence, to the same extent as if they were introduced for the purposes of this testimony.

THE COURT: Is it your purpose to have this testimony to give orally the information that is disclosed by the statement which has been prepared by him, or is it your purpose to let the statement speak for itself without oral testimony.

MR. ANDERSON: After he has verified the statement and says it is taken from these original records which are now in Court, I shall then ask leave to file the statement of the witness or I will let him give the oral evidence if the statement is objected to.

THE COURT: I assume that the statement would be objected to only for the same reasons that the oral testimony would be objected to, but that by the admission of the statement under those conditions we could save much time.

MR. ANDERSON: That was my idea, sir.

I understood you to agree, Mr. Kresel, that he could testify as if these records were in, without actually putting them in.

MR. KRESEL: Yes, I agree to that.

RDQ. 286. You have handed me a statement entitled "In re Chemical Foundation, statement of payments to the Alien Property Custodian on pre-war contracts assigned to the Chemical Foundation"?

A. Yes, sir.

RDQ. 287. Is that the statement referred to in your former answer?

A. Yes, sir.

MR. ANDERSON: We now offer this statement in evidence to be identified and read as Plaintiff's Exhibit No. 400."

MR. KRESEL: We object to it upon the grounds that we have urged to the other compilations made by this witness.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 400." (*See Exhibits, Vol. I, page 699.*)

RDQ. 288. I understood you to say that this statement just introduced into evidence was made up by you from the original records of the Alien Property Custodian which were produced in Court and are now before me, identified by Mr. Schmits this morning; is that true?

A. Made up under my supervision. The actual work was not mine, but the checking is all mine.

RDQ. 289. You have checked every item in this statement against the original record?

A. Yes, sir.

RDQ. 290. And you testify that every item on that statement is correct in accordance with the original records of the Alien Property Custodian's Office?

A. To the best of my knowledge and belief; yes, sir.

RDQ. 291. And the accountant for the defendant, Mr. Dold, checked that statement with you, did he not?

A. He checked it alone.

RDQ. 292. Mr. Storck I asked you also to check these original records against Exhibit G and the several schedules thereof with the Bill of Complaint in this cause as corrected and introduced, to ascertain

for me whether or not the patents to which the contracts mentioned in your statement refer under which they were issued, were included in the patents and other properties assigned to the defendant, as shown by that exhibit. I understand you have not been able to complete that statement?

A. Not yet; I have not had the time.

RDQ. 293. I will ask you to complete that statement and I will file it at a later date.

A. I will.

RDQ. 294. I put in evidence this morning the original licenses issued by the Federal Trade Commission as identified by Mrs. Wilson. I will ask if you have made up a statement from those licenses and other records which I introduced at the time you were in the Court room, showing the royalties accrued under licenses issued by the Federal Trade Commission; and if so, will you present that statement and explain what it contains and the sources from which it was made up?

A. I have made up such a statement but it is my working sheets. I have not had time to have it typed, but it is here.

RDQ. 295. That does not matter. I will introduce the original.

THE COURT: He will need that, will he not, in making up his copies?

MR. ANDERSON: It is a very elaborate statement, if your Honor please, and it will take an enormous amount of time to copy it. We have not the force to do it and I will have to introduce the original and take our chances, without delaying the evidence.

THE COURT: Very well.

MR. ANDERSON: I have not a copy. I will have to do the best I can.

MR. KRESEL: Will you ask him to state what
is.

MR. ANDERSON: Yes, I asked him to state wh
it is and how he made it up.

A. This is a statement of payments to the Alie
Property Custodian on Federal Trade Commissio
licenses covering patents assigned to the Chemic
Foundation, Incorporated. It begins with the licens
number and letter, the name of the party to whom i
sued, the license number, the date the license wa
issued the patent number, the patent date, the date
expiration of the patent, the date of receipt of mone
by the Alien Property Custodian, the date the mone
was deposited with the United States Treasurer, th
date of the Certificates of Deposit from the Unite
States Treasurer, the number of the Certificate
Deposit, and the amounts and totals; which tied i
with a few exceptions with my statement the other da
Plaintiff's Exhibit No. 198.

By MR. KRESEL:

RDQ. 296: That is, you have reconstructed E
hibit No. 198, is that it?

A. Yes, sir; with these additions, as I stated.

By MR. ANDERSON:

RDQ. 297: You have handed me a statement co
sisting of five sheets containing various columns ar
headings which you have just enumerated. Is that th
statement to which you have just referred?

A. Yes, sir.

RDQ. 298. I would ask you to state from wh
records you made up that statement?

A. From the original licenses, from the slips
the Alien Property Custodian in which the money wa
received in the mailing room.

RDQ. 299. Are those slips among the pape

identified by Mr. Schmits this morning and now in court?

A. Yes, sir.

RDQ. 300. All right.

A. From the duplicate deposit tickets of the Alien Property Custodian to the United States Treasurer remitting the funds.

RDQ. 301. Those papers are now in Court?

A. Yes, sir. From the certificates of deposit from the United States Treasurer to the Alien Property Custodian which are there.

RDQ. 302. Those certificates of deposit, I understood from Mr. Schmits, showed all of the amounts which had been deposited under these particular patents, with the exception of such as the Treasurer could not locate, and the affidavits introduced from the treasurer of the United States covering those that could not be located?

A. That is true.

RDQ. 303. And with that statement, those are the records now in Court?

A. Yes, sir.

RDQ. 304. Did you follow those certificates of deposit on to the record books of the Alien Property Custodian, the original entries?

A. Yes, sir; I followed them on to the original accounts which you have there.

RDQ. 305. And these large yellow sheets are the original accounts showing the entries of the various matters as to which you have just testified on the original books of the Alien Property Custodian?

A. Yes, sir.

RDQ. 306. The license number as shown in the first column of the statement which you identified was the license number taken from the original license, was it?

A. Yes, sir.

RDQ. 307. The date of the licenses was the da
taken from the original licenses which were introduce
in evidence this morning?

A. That is where it was ascertained, yes, sir.

RDQ. 308. The patent numbers were the pate
numbers contained in the licenses introduced in ev
dence this morning, were they?

A. Yes, sir.

RDQ. 309. The dates of the patents were th
dates designated in those original licenses, were they

A. Yes, sir.

RDQ. 310. The date of the expiration of the pa
ent; where did you get that information from?

A. To the date of the patents, seventeen yea
were added unless it said "indeterminate" or othe
wise.

RDQ. 311. So that is based upon the date of th
original patent as introduced in evidence this morning

A. Yes, sir.

RDQ. 312. How about the date of receipt
money by the Alien Property Custodian?

A. That is taken from the small slips that we
up to the cashier's desk.

RDQ. 313. And those are the slips I have he
before me, identified by Mr. Schmits this morning
original records?

A. That is correct.

RDQ. 314. And they are now in Court?

A. Yes, sir.

RDQ. 315. The date of deposit with the Unite
States Treasurer?

A. That is a deposit ticket on a form that th
Alien Property Custodian makes when he makes h
deposit with the Treasurer of the United States.

RDQ. 316. And those forms and deposit ticke
are among the tickets and original papers presente

this morning by Mr. Schmits, identified, and now before me in the Court room, is that true?

A. Yes, sir.

RDQ. 317. The date of Certificate of Deposit from the United States Treasurer?

A. That is taken from the Certificate of Deposit that is issued by the Treasurer of the United States to the Alien Property Custodian acknowledging his deposit.

RDQ. 318. And those certificates of deposit, so far as they have been found and are indicated on this sheet, are among the original papers introduced or presented this morning and identified by Mr. Schmits, and now before me, are they?

A. They are.

RDQ. 319. And they have been checked back against those original papers.

A. Yes, sir.

RDQ. 320. And where the sheet indicates that the original deposit certificate is not presented, it is based upon the affidavit of the Treasurer of the United States of the date he received the money, is that true?

A. Yes, sir.

RDQ. 321. You have a heading here "Number of Certificate of Deposit." That is derived from the same source as the date of the deposit, is it not?

A. Yes, the number appears upon the Certificate of Deposit.

RDQ. 322. And the amount is taken from the Certificate of Deposit and the original records of the Alien Property Custodian which you have here in the Court room, these sheets.

A. Yes, sir.

MR. ANDERSON: We offer in evidence a statement which has been identified by the witness entitled "In re Chemical Foundation, Statement of Payments to the Alien Property Custodian on

Federal Trade Commission licenses covering patents assigned to Chemical Foundation, Incorporated, to be identified and read as "Plaintiff's Exhibit No. 401."

MR. KRESEL: We object to it upon the ground that we have heretofore raised, and further upon the ground that no proper foundation has been laid for it.

MR. ANDERSON: You do not object to the fact that the original evidence in the Court has not been introduced in evidence.

MR. KRESEL: I have already stated that I do not make that objection.

THE COURT: I am not sure that I understand your objection that no foundation has been laid. Will you elaborate on that, Mr. Kresel?

MR. KRESEL: Yes, your Honor. I may point out only one instance of that and that is that of course we are not bound by any affidavit made by somebody. We can not be trying law suits on affidavits.

THE COURT: I assume that that would be one of your objections. What have you to say with respect to that, Colonel Anderson.

MR. ANDERSON: Simply this, sir, that in my judgment the date of deposit with the Treasurer of the United States is only necessary to make the record complete. If this money was paid to the Alien Property Custodian, as to which the original records are here, then that is all that is required, because he is the officer of the government to receive it. We are not suing for the money. I wanted to make the record complete and show the deposit with theTreasurer, to show that the law had been completely complied with. I am not going to go to the trouble and expense of calling the Treasurer of the United States to

testify on this subject, but I will rest on the affidavit as it now stands. I recognize that it is not primary evidence, but I think under the circumstances the courts will receive it as evidence.

THE COURT: I will not pass upon the latter point, but if you want to annex the affidavits of the Treasurer of the United States to the document which you now offer, in order that this Court and any Appellate Court may determine for itself the particular items in this sheet which are based upon the affidavit of the Treasurer, you may.

MR. ANDERSON: I think the suggestion of your Honor is a good one because it will enable us when we come to study the record, to understand the situation much better, although the annotation in the statement shows what is based on the affidavit in each case. I think probably the affidavits had better be attached.

THE COURT: As part of the same exhibit and not as independent evidence.

MR. ANDERSON: I amend my offer so as to say, including two affidavits and accompanying statements of the Treasurer of the United States to which the witness has referred, all to be included as Exhibit No. 401.

Received in evidence and marked "Plaintiff's Exhibits Nos. 401-A and 401-B." (*See Exhibits, Vol. I, page 713; Vol. I, page 717.*)

RDQ. 323. Mr. Storck, you stated just now that you had tied in your statement filed as Exhibit No. 400 with your statement filed as Exhibit No. 194?

A. Yes, sir.

RDQ. 324. Will you now take these two exhibits and say if the tying in shows the same totals and what they are; and if not, what differences exist?

A. On Exhibit No. 194, the amount is shown as $152,801.77, while on Exhibit No. 400 the amount is

shown as $152,758.04. But there are corrections. Trust No. 11,269 on the original statement was short $44.00, and on Trust No. 3816 it was 27 cents over, making a difference of $43.73, which should be added to the $152,758.04, which would make the amount $152,801.77, as shown on Exhibit No. 194.

RDQ. 325. Please state on the record the amount which was collected by the Alien Property Custodian as shown by his original records, in the manner which you have already testified, under these contracts, by periods, as stated on your summary, making up the total you have stated?

THE COURT: Does that appear on your statement, Colonel Anderson?

MR. ANDERSON: I really do not know, sir. I want to get it.

MR. KRESEL: It does.

THE COURT: It does appear on your statement.

RDQ. 326. Now I will ask you to take our old friend, No. 198, with the summary 198-A, and ask if you have tied your statement No. 405 just filed with the statements 198 and 198-A, and if so, give the results and the differences if any?

A. Will you please let me have 401?

RDQ. 327. Yes (handing witness).

A. Exhibit 198 shows the amount of $491,571.38, which represented royalties earned. In connection with 401 I could not show the royalties earned for the simple reason that the Alien Property Custodian's office does not show it, but they only show the amounts paid.

RDQ. 328. Let me get that straight. Your statement of royalties earned is made up from the original records in the Federal Trade Commission presented, identified and introduced in evidence by Mrs. Wilson this morning?

A. That is correct.

RDQ. 329. That showed the royalties earned by those licenses, and your statement 401 shows the actual royalties paid to the Alien Property Custodian, with the dates of payment; is that true?

A. That is correct.

RDQ. 330. What are the differences, if any?

A. The amount shown on Exhibit 198 as paid was $486,036.66, while the amount shown on Exhibit 401 was $484,513.65.

RDQ. 331. What was the amount of difference?

A. The difference would be $1,523.01. I have located such difference.

RDQ. 332. Tell where you located it and explain it.

MR. KRESEL: Does that appear from the statement?

THE WITNESS: Sir?

MR. KRESEL: Does that appear from the statement, these differences?

THE WITNESS: Yes, sir.

RDQ. 333. Explain how it arises.

A. Well, some were royalties accrued, not yet collected by the A. P. C.; others were excess adjustments and taking fractions, five points or over, like one cent.

RDQ. 334. And those differences are indicated in the "Remark" column of your statement, are they?

A. Yes, sir.

RDQ. 335. Then you need not go any further.

A. Then I credit amounts subsequently deducted, with dates shown when deducted.

RDQ. 336. Mr. Storck, with those modifications are you prepared to say that the facts as set forth on Exhibit No. 198 and your Exhibit No. 401 are correct in accordance with the original records of the Alien Property Custodian's office and the Federal Trade Commission office?

A. They are.

RDQ. 337. And they are made up from the original records which have been presented here and either introduced in evidence or now in Court identified?

A. Yes, sir.

RDQ. 338. I will now ask you to take your summary Exhibit No. 200 and say whether with the additional statements which you have put in and additional data which you have gathered from the original records as testified, that summary requires any modification in order to make it absolutely correct, and if so state what modification and explain the same?

A. It needs none.

RDQ. 339. The sum totals as shown on that statement for the various periods, then, are correct?

A. Yes, sir.

RDQ. 340. I will also ask you to take your statement No. 199, original filed in this case, and say whether in view of the additional statements filed there are any changes or corrections to be made in that or whether the results are correct?

A. They are correct as so stated.

RDQ. 341. The facts stated on that statement are correct in accordance with the original records to which you testify, are they?

A. Yes, sir.

MR. ANDERSON: If your Honor please, I have asked the witness to prepare one other statement but they have been working until two or three o'clock in the morning. There is also one other matter. He is engaged preparing two statements for me, but I will recall him, and now turn him over for cross-examination, and will recall him a little later when they are ready.

MR. KRESEL: You will recall him, you say?

MR. ANDERSON: A little later, on other mat

ters entirely; but so far as this matter is concerned, it is concluded.

THE COURT: Would you like to reserve your cross-examination, Mr. Kresel?

MR. KRESEL: Your Honor, I would just as leave get through with as much of it as I can. I won't be very long. I would like to have Exhibit No. 400.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RXQ. 342. This reconstructed statement concerning contracts which is now marked Plaintiff's Exhibit 400, I notice that you have not deducted on that the $30,000 which has been paid as principal on one of these licenses.

A. No, sir; it has not.

RXQ. 343. Therefore to that extent this Exhibit 400 is different, or rather to that additional extent this Exhibit 400 differs from Exhibit 194?

A. It does; yes, sir.

RXQ. 344. In other words, there should be deducted from the total that you show on Exhibit 400, namely, the amount $152,758.04, the amount $30,000?

A. That is shown on another statement, Mr. Kresel, which Colonel Anderson asked me whether there was any change in. If you will get it for me I will show it to you.

MR. KRESEL: I would like to have now Exhibit 194, please.

THE WITNESS: I do not think that is the number.

MR. KRESEL: Well, I want Exhibit 194.

RXQ. 345. Exhibit 194 and Exhibit 400 are the two statements that you are reconciling, are they not?

A. Yes, sir, together with the additional informa-

tion that was asked, such as the expirations of patents, dates of issue.

THE COURT: I can not quite hear you, Mr. Storck.

THE WITNESS: I said yes, sir, with the additional information that I put on, such as dates of patents, expiration of patents, and so forth, which does not appear on the original statement that I sumitted, 194.

RXQ. 346. In other words, on Exhibit 400 you have given some additional information?

A. Yes, sir.

RXQ. 347. That is, additional to that extent in Exhibit 194?

A. Yes, sir.

RXQ. 348. But as to the total of $152,801.77, which is the total appearing on Exhibit 194——

A. That would be the same.

RXQ. 349. Wait a minute now. (Continuing.) And the total of $152,758.04, which is your total on Exhibit 400, the difference of which you have explained, this item of $43.73, I say that there should be deducted on each of those statements $30,000, which was received as principal under this license and not as license royalty?

A. That is quite true, sure. It is shown on another statement, as I said.

RXQ. 350. Still referring to Exhibit 400, still that statement regarding contracts, can you tell me from this statement for what period the payments that are shown as having been received here were received?

A. No, sir.

RXQ. 351. Just to illustrate my question and your answer, the first item is a contract issued to General Ceramics Company, Inc., and as to that you show that on the 15th day of May, 1918, the Alien Property Custodian received $3,019.17?

A. That is correct.

RXQ. 352. What I am asking you is whether you can tell for what period that sum of money was paid?

A. On that statement?

RXQ. 353. On that statement.

A. Absolutely not. It was not prepared for that.

RXQ. 354. Can you give me the information outside of the statement?

A. Yes, I think I can.

RXQ. 355. Will you do it, please?

A. Surely. The name was National Ceramics?

RXQ. 356. General Ceramics Company.

A. I can not show it from here, but let me see the Federal Trade cards. (Takes and examines cards.)

RXQ. 357. Mr. Storck, are you not confused?

A. I do not think I am.

RXQ. 358. The Federal Trade cards do not show anything about these contracts.

A. That is true. That is true.

RXQ. 359. Mr. Storck, are you not confused?

A. I do not think I am.

RXQ. 360. The Federal Trade cards do not show anything about these contracts?

A. No, that is true.

RXQ. 360-A. Can you give me the information from any source?

A. No, I can not.

RXQ. 361. All right, I will pass on to the next thing then. Now, Colonel Anderson asked you with reference to Exhibit No. 200, as to whether that required any modification in view of your testimony today, and you looked at it and stated that it did not?

A. It did not.

RXQ. 362. Now, these changes between Exhibits 194 and 400, are they reflected in this Exhibit 200?

A. You are referring to the $30,000?

RXQ. 363. Yes.

A. No, sir.

RXQ. 364. The change of the forty-three odd dollars, though a small item, is that reflected in this Exhibit 200?

A. Yes, sir, it is accounted for in there.

RXQ. 365. Where is it?

A. It is in the amount of $152,800.

RXQ. 366. I understood you to say that was the original amount, but that you had to deduct $43 from it?

A. I said that I would have to add $43 to it because——

RXQ. 367. Very well, then if you add to it you would still have to make a change in that statement, would you not?

A. Oh, no, I do not.

RXQ. 368. Then I do not understand you.

A. I will try to explain it.

RXQ. 369. Please do.

A. I stated that when I prepared the first statements, showing $152,800——

RXQ. 370. Yes.

A. That was taken from the contracts as submitted by the Alien Property Custodian, and I went back to check their books and I found they had made a correction of $43.77, which would make my statement different. In order to balance, I would have to add $43.77.

RXQ. 371. And that you discovered after you made up this statement, Exhibit 200?

A. Yes, I discovered that.

RXQ. 372. I say, after you made up this statement, No. 200?

A. Yes, long after.

RXQ. 373. Do you not have to make the change in there so as to make it correct?

A. All right, I will change the $43 for you.

RXQ. 374. My dear man, I am not trying to bargain with you on $43. I am simply checking you up, as to your testimony that that does not require correction. You now admit that it does, do you?

A. Yes, sir, I will correct it for $43.

RXQ. 375. All right; that is all I wanted. Now, I asked you last Friday to be careful to acquaint yourself with whatever the records of the Alien Property Custodian or of the Federal Trade Commission showed with reference to licenses issued to what are known as the Haber Process patents; do you remember that?

A. I remember you stating that.

RXQ. 376. Did you discover that the Federal Trade Commission did issue a license on the Haber Process patents?

A. I want to state to you that it went right entirely out of my memory, Mr. Kresel.

RXQ. 377. You have not acquainted yourself with that?

A. No, sir.

MR. KRESEL: Now, Mr. Clerk, may I have, please, that bundle of cards, the Federal Trade Commission cards; have you those? (Handed to counsel.)

Colonel Anderson, so that we may not have to recall this witness for that purpose, will you concede that this Plaintiff's Exhibit No. 329 is the original Federal Trade Commission card, showing that a license, No. 61, was issued on the 4th day of March, 1919, to the Semet-Solvay Company, covering what are known as the Haber patents? If you desire to examine that, you will see from it that that is so indicated.

MR. ANDERSON: The license is here in evidence. That is our copy. It has been introduced

and withdrawn and a copy substituted. The e
hibit number is on the paper.

MR. KRESEL: And the number of it?

MR. ANDERSON: 269.

MR. KRESEL: In other words, it is concede
is it, Colonel, that Federal Trade license No. (
dated March 4, 1919, which is now in eviden
as "Plaintiff's Exhibit No. 269," is the licen
issued by the Federal Trade Commission on t
Haber patents?

MR. ANDERSON: I do not know anything in t
world about it other than that license is in e
dence, and whatever it speaks for I am perfect
willing to concede. If I knew the facts I wou
concede them with the greatest pleasure.

MR. KRESEL: Let me see whether it is possib
that this be conceded; otherwise I am going
ask Mrs. Wilson to help us out while she is here

MR. ANDERSON: I wish you would, because
do not know very much about it.

MR. KRESEL: Here it is, Colonel. There is
statement—Haber, Haber-Bosch, Bosch, Bosc
Those are the Haber-Bosch patents, for ammoni
Perhaps I had better ask Mrs. Wilson about tha

MR. ANDERSON: Very good. I think y
ought to, because I really do not know the facts

MR. KRESEL: All right; I will ask Mrs. W
son about it. That is all, Mr. Storck.

MR. ANDERSON: One minute, before you g
Mr. Storck.

RE-CROSS-EXAMINATION.

By MR. ANDERSON:

RDQ. 378. You spoke, on cross-examination,
$30,000, paid on account of principal of a certain co
tract. Could you identify that contract on your li
there?

A. I could, if you would show me another exhibit. I do not know the number of it, but I can pick it right out.

RDQ. 379. State the date and the number of the contracts for identification to which you refer?

A. The item that Mr. Kresel asked me about refers to trust No. 12,681 of the American Kitchen Products Company, of which $30,000 was a payment on principal.

RDQ. 380. Where did you get the information that that was a payment on principal?

A. From the statement as submitted by the Alien Property Custodian.

MR. ANDERSON: If your Honor please, I asked counsel last week to let me have a copy of that contract, the original being in their possession; and I wish to offer in evidence a copy of several separate papers constituting that contract and certain amendments thereto, furnished me by counsel this morning, to be identified and read as Plaintiff's Exhibit No. 402. The purpose of the offer is to see just what that payment was made on account of, the best evidence being the contract itself.

MR. KRESEL: Subject to our general objection as to the materiality and relevancy of this testimony, we have no objection to letting this copy go in.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 402." (*See Exhibits, Vol. I, page 720.*)

THE COURT: Are you through with Mr. Storck, on both sides?

MR. KRESEL: I am through.

MR. ANDERSON: For the present, yes, your Honor. I will have to recall him later when he has finished this work upon which he is engaged.

MR. KRESEL: Colonel, while I am on this subject, might I recall Mrs. Wilson for a question?

MR. ANDERSON: Certainly.

MR. KRESEL: Would you mind, Mrs. Wilson

MARGARET R. WILSON, a witness on behalf of the plaintiff, resumed, further testified as follows:

RE-CROSS-EXAMINATION (Continued).

By MR. KRESEL:

RXQ. 58. Mrs. Wilson, did the Federal Trade Commission issue any license to any one covering what are known as the Haber patents for the synthetic production of ammonia?

A. The license, I think, No. 61, to the Semet-Solvay Company.

RXQ. 59. Pardon me; I did not get it all.

A. The license to the Semet-Solvay Company, I think the number is 61, but I do not carry the number in my mind.

RXQ. 60. Yes. Please look at Federal Trade Commission License No. 61, which is now in evidence as Plaintiff's Exhibit No. 269, and state whether that is the license that was issued by the Federal Trade Commission covering those patents?

A. This is the license.

MR. ANDERSON: You mean the patents mentioned therein?

MR. KRESEL: Yes. I will have her enumerate the patents.

MR. ANDERSON: Very well.

RXQ. 61. Did the Federal Trade Commission issue any other licenses to anybody else covering any of those patents?

A. To the best of my knowledge and belief, no.

RXQ. 62. The particular patents that are cov-

ered by the license are specified in the license, are they not?

A. In that case, in the license, and I think in the schedule annexed to the license.

RXQ. 63. I am going to hand you the license, and I am going to ask you if you will be good enough to look at it and state how many of those Haber-Bosch patents are covered by that license?

A. When you speak of the Haber-Bosch patents, do you not mean this entire list, covering the production of ammonia?

RXQ. 64. Yes, that is what I mean.

A. And then you ask how many of these are covered in this license?

RXQ. 64-A. How many patents are covered by this license; that is my present question?

A. The license says, to carry on the processes and inventions of certain United States letters patent, owned or controlled by enemies or allies of enemies, copies annexed hereto, relating to the production of ammonia, for the terms of each of the respective patents, and the schedule annexed shows—I have not copied the number, but the group of patents covering the production of ammonia did indicate all that are in that group are covered by the license.

RXQ. 65. The license covers the entire group of patents for the synthetic production of ammonia?

A. So far as they are identified in this schedule and annexed to and forming a part of the license.

RXQ. 66. Then, I am asking you to be good enough to turn to that schedule and tell us how many licenses are specifically named there by number and description—how many patents are specifically described there by number and description.

THE COURT: Has the witness answered?

MR. KRESEL: Are you ready?

A. By my count, I make it 25.

RXQ. 67. Now, then, that license was issued on the 4th of March, 1919, is that right?

A. Yes, sir, that is correct.

RXQ. 68. I now show you the original card of the Federal Trade Commission relating to this license No. 61, which card is now Plaintiff's Exhibit No. 329. First tell me whether that is the card relating to that license?

A. This is the original card.

RXQ. 69. It is. Will you please state from that card, which is your record, how much royalties were reported as having been earned on that license?

A. No royalties were paid under this license.

RXQ. 70. No royalties either reported as earned or paid?

A. Not by the Semet-Solvay Company.

RXQ. 71. That is all I am talking about. I am talking about this license; and that record as to accrual of royalties or payment of royalties, runs from March 4, 1919, to what date—the present?

A. No. Our records closed on the 2nd of July, 1922.

RXQ. 72. So that up to the 2nd—or the 7th, did you say?

A. 2nd of July.

RXQ. 73. The 2nd of July, 1922, the licensee under that license reported no earnings or accrual of royalties under that license?

A. The Semet-Solvay Company, as licensee, reported no earnings or accrual of royalties.

RXQ. 74. You seem to be stressing the name of the licensee. Did anybody else pay any royalty?

A. Not under this license.

RXQ. 75. That is what I am talking about, this license; and you have told me as far as you know, and the records of your department were, there was no other license issued covering these ammonia patents?

A. Not by the Federal Trade Commission.

RXQ. 76. Now, you say that your records closed on the 2nd of July, 1922. Do you mean that there are no records of the Federal Trade Commission subsequent to that date?

A. No, I mean that by the one sub-section of the Enemy Trade Act the licensee was relieved of the liability of making any further payments after one year following the expiration of the war, during which time the enemy owner or the owner was entitled to sue against the license. If suit were entered, he was relieved for such time as he presentd it.

RXQ. 77. So that up to the time when the licensee had under the law to make reports to the Federal Trade Commission, all the reports on those licenses indicated that no royalties had accrued or been paid?

A. By the Semet-Solvay Company.

THE COURT: Or all others?

THE WITNESS: Yes.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 78. Mrs. Wilson, do you know anything about the character of these patents except shown in that license, except shown in the license issued as now in your hand?

A. The character of the patents?

RDQ. 79. Yes.

A. I do not know whether this is proper to add, but the explanation I would like to make in response to that question is——

MR. KRESEL: One minute, I object to any explanation.

RDQ. 80. What you have been testifying to is all taken from that record of that patent?

A. Yes, sir.

RDQ. 81. All taken from that record?

A. It is all taken from this record.

RDQ. 82. And you have spoken entirely from the record as far as it shows anything there?

A. Absolutely.

MR. ANDERSON: Then I move to strike out the cross-examination. The record speaks for itself, as to what the patents are and everything about them.

THE COURT: Have you anything to say to that, Mr. Kresel?

MR. KRESEL: No, your Honor. I do not think I need answer that.

THE COURT: It may stay, at least under our general rule, Colonel Anderson.

MR. KRESEL: All right; that is all, Mrs. Wilson.

(Witness excused.)

MR. ANDERSON: Now, if the Court please, I wish to read into evidence, as admissions against the answer in this case, and the position of the defendant, certain statements made by Joseph H. Choate, Jr., Esq., as general counsel of this company, before the Committee of Congress on certain hearings upon Bills, which I will identify.

MR. KRESEL: Now, if you will just tell me where you are reading from, I will see whether there is any objection to it.

MR. ANDERSON: All right, sir.

MR. KRESEL: What page is it?

MR. ANDERSON: The first one is from the Official Publication made by the Government of the hearings before the Committee on Ways and Means, House of Representatives, on H. R. 2706, entitled, "A Bill to amend an Act entitled 'An Act to increase the revenue, and for other purposes,' approved September 8, 1916, and H. R. 6495, A Bill to regulate the importation of coal-tar prod-

nets, to promote the establishment of the manufacture thereof in the United States and, as incident thereto, to amend the Act of September 8, 1916, entitled, 'An Act to increase the revenue, and for other purposes'," the hearings being from June 18-20 and July 14-18, 1919.

At page 87, there is a title: "Statement of Mr. Joseph H. Choate, Jr., Counsel, The Chemical Foundation (Inc.) and American Dyes Institute."

MR. KRESEL: I ask that that be stricken out, as not binding upon the defendant.

MR. ANDERSON: Very good.

MR. KRESEL: They are not responsible for what heading somebody puts in that record.

MR. ANDERSON: I will just strike the heading out, because he stated himself on the next page, and I will read what he said. I thought it might shorten it.

On page 88, Mr. Choate is asked the following question, and he answered:

> "THE CHAIRMAN: Give the name of the company you represent to the stenographer?
>
> "MR. CHOATE: I appear here as counsel for The Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye-makers, or substantially all the important dye-makers in the country because they have exactly the same point of view presented by The Chemical Foundation today and are therefore properly represented by the same counsel."

MR. KRESEL: Is that the statement you want in the record?

MR. ANDERSON: That is the statement I want in the place of the other statement.

MR. KRESEL: All right. Now, I object to that

upon the ground that the statement of Mr. Choate is not binding upon this defendant unless it is made to appear that he was authorized to make statements on behalf of The Chemical Foundation. Your Honor will recall that the same subject was debated before your Honor at the time when Colonel Anderson read in certain statements of Mr. Garvan. I think the point now taken is even more in point as to Mr. Choate than as to Mr. Garvan.

Of course, under the general rule, your Honor permitted the statement of Mr. Garvan to be read, and I ask that your Honor will follow the same course with reference to Mr. Choate, but I want my objection to be noted.

THE COURT: I only briefly recall, Colonel Anderson. You may state on the record the grounds upon which you think this is binding on the company, if you so desire.

MR. ANDERSON: If your Honor please, upon the evidence in this case already introduced, and Mr. Choate's own statement, which I have read, I think it abundantly appears that Mr. Choate was not only officially general counsel of The Chemical Foundation and counsel for the Dyes Institute, but that he was its active spokesman in most of the matters which concern its position and policy in respect to the Government of the United States. And therefore his statements would clearly be admissions against the defendant. I think that statement sufficiently covers it unless your Honor desires more.

MR. KRESEL: I assume your Honor will grant us leave, as you said you would with reference to Mr. Garvan's testimony, to read any portion of Mr. Choate's statement, from which portions are about to be read by the Government.

THE COURT: The general rule will apply to you also, Mr. Kresel.

MR. ANDERSON: I shall object to that very strenuously, on the ground it is not permissible, but we need not argue that now, because we will come to it at the proper time.

On page 108 Mr. Choate is asked a question by Mr. Moore, a member of the Committee. It already appears on the record to that effect.

> "They"—the text shows, referring to the patents taken over by this company—"they did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make, at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of The Chemical Foundation (Inc.)?
>
> "MR. CHOATE: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.
>
> "MR. MOORE: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.
>
> "MR. CHOATE: In order that patents might be placed on precisely the same footing as other personal property?
>
> "MR. MOORE: He is in position to make an accounting now, as Congress expected?
>
> "MR. CHOATE: Yes; because the law requires that he shall make an accounting."

At page 109, in further discussion of the matter, Mr. Choate said:

"The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold."

Further, on the same page, a discussion of the price of these patents, $250,000, Mr. Choate was asked by Mr. Moore:

"What was paid for those patents?

"MR. CHOATE: $250,000.

"MR. MOORE: By an arrangement with the Alien Property Custodian, they were sold to The Chemical Foundation (Inc.)?

"MR. CHOATE: Yes.

"MR. MOORE: He suggested this law in order to take them over?

"MR. CHOATE: Precisely.

"MR. MOORE: May I ask how the terms were fixed?

"MR. CHOATE: Those terms were fixed by guesswork in the same manner as an individual would value patents by guesswork."

At Page 122 there is a further discussion of the matter begun by a question of Mr. Kitchin, who, I assume it will be admitted, was a member of the Committee.

MR. KRESEL: Yes.

MR. ANDERSON: (Reading.)

"MR. KITCHIN: I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1,200 patents, was organized, and then the other patents were put on sale at public auction?

"MR. CHOATE: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The

only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer."

Further down on the same page 122, Mr. Choate is asked:

"MR. KITCHIN: Offered separately, or were all the patents covering dyestuffs offered en bloc?

"MR. CHOATE: They were sold in one transaction to The Chemical Foundation.

"MR. KITCHIN: What was the actual amount of cash that was paid for them?

"MR. CHOATE: $250,000.

"MR. KITCHIN: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?

"MR. CHOATE: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance—dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

"MR. KITCHIN: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?

"MR. CHOATE: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a

law suit, because the act provided that there should be a determination by a Court of how much more than 5 per cent they should pay.

"MR. MOORE: Would the United States have suffered in the war if we had continued to hold those patents in the hands of the Alien Property Custodian until the close of the war?

"MR. CHOATE: In this war, I doubt it.

"MR. MOORE: They were of no avail to us during the war?

"MR. CHOATE: I think not.

"MR. MOORE: And of course the Germans could not use them here?

"MR. CHOATE: It is a very difficult question, but I suppose that the patents on the dyestuffs products themselves would have little bearing on the war. It is their bearing on the dyestuff industry that gives them a colossal importance. We might have held all the property and given it back to the Germans."

I shall next read some statements of Mr. Choate at the hearings before the Committee, from a book or publication entitled, "Hearings before the Committee on Finance, United States Senate, Sixty-sixth Congress, Second Session on H. R. 8078, an act to regulate the importation of coal tar products; to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the Act of September 8, 1916, entitled 'An Act to Increase the Revenue and for other purposes'," hearings December 8, 9, 10, 11, 12, 13, 1919, and January 12, 1920. I read from page 113 of this report.

MR. KRESEL: Whose testimony is that?

MR. ANDERSON: Mr. Choate's.

MR. KRESEL: I object to any reading of any testimony of Mr. Choate during these hearings upon the ground that it appears upon the face of

the report that Mr. Choate in this proceeding was appearing simply as counsel for the American Dyes Institute. That appears at page 6 of this statement.

MR. ANDERSON: I will read Mr. Choate's statement to which counsel refers. I am very much obliged to him for reminding me of it; I overlooked it. It will appear from the title and number of the Bill under consideration and no doubt be conceded by counsel that this was a hearing in the Senate of the Committee on Finance on the same Bill that was before the House at the former hearings. At page 6, when Mr. Choate was first called, he stated:

> "MR. CHOATE: Mr. Chairman and gentlemen of the Committee, my name is Joseph H. Choate, Jr.; my residence is New York; and I am appearing before you as counsel for the American Dyes Institute, an association which includes the makers of, I think, upward of 90 per cent of the dyes produced in the United States, and nearly all those makers who produce a substantial quantity."

MR. KRESEL: Pardon me a minute. I object to the reading of that statement into the record if counsel thereby intends to hold that is proof of the fact, upon the ground, as I have stated, that any statement made by Mr. Choate at this time when, as appears here, he was appearing as counsel for the American Dyes Institute is not binding on this defendant.

MR. ANDERSON: If your Honor please, I shall not argue the matter at length.

MR. KRESEL: Pardon me a minute. So as to keep my record straight, I ask that the statement just read by Colonel Anderson be stricken from the record.

MR. ANDERSON: In order merely to state
position on the record, it must certainly appe
obvious and will be contended by the Governme
in this case that the evidence has now reached
stage which shows by the positive testimony
the witnesses themselves, including Mr. Choa
and by the records which have been inroduc
here, that The Chemical Foundation and
American Dyes Institute are one and the sa
thing; that The Chemical Foundation is nothi
in the world but the hand of the American Dy
Institute; that every dollar of money put into T
Chemical Foundation was subscribed by the me
bers of the American Dyes Institute; that th
organized it; that they are the real beneficiari
of its operations; that the American Dyes Ins
tute and The Chemical Foundation and those w
organized those companies are all parties to
various transactions, the purpose of which w
to monopolize this industry, prevent and restra
foreign commerce, and bring about the conditio
which I enumerated this morning.

There is a charge of conspiracy here, and
course it is elementary law that where there is
conspiracy, and adopted by the various parti
even though they were not originally parties
it, admissions by one are good against them all
relation to any matter within the scope of th
scheme or transaction. There are various a
sundry reasons, therefore, why an admission
Mr. Choate at this stage of the record would
admissible not only against The Chemical Fou
dation, but the American Dyes Institute; and
go further and contend that a statement by a
official of the American Dyes Institute would
binding upon The Chemical Foundation as to the
matters, and a statement by any official of T

Chemical Foundation would be binding upon the American Dyes Institute.

THE COURT: Was the American Dyes Institute named in the Bill as one of the parties——

MR. ANDERSON: It is not a party defendant, but we ask for relief with respect to them. It is named as one of the parties to the conspiracy.

THE COURT: One of the parties to the conspiracy?

MR. ANDERSON: Yes, sir.

THE COURT: The record or booklet which you have before you discloses that Mr. Choate at the time he was speaking, was speaking for whom?

MR. ANDERSON: The American Dyes Institute. He described himself as counsel for the American Dyes Institute.

THE COURT: Is the American Dyes Institute an incorporated body or is it an unincorporated association of persons?

MR. ANDERSON: I think it was incorporated.

MR. KRESEL: No, I think not. It is unincorporated.

THE COURT: I will hear you now, Mr. Kresel.

MR. KRESEL: If The Chemical Foundation were charged to be a member of this conspiracy, then I could see the force of Colonel Anderson's argument on the law; namely, that if The Chemical Foundation was one of the conspirators, then any admission by any other conspirator would be binding upon it. But The Chemical Foundation is specifically exempted from the charge of conspiracy here. Your Honor will read this Bill from beginning to end and you will fail to find a single allegation to the effect that The Chemical Foundation was in this conspiracy. The conspiracy is laid against the American Dyes Institute, the Textile Alliance, Chemical Manufacturers and others

not named. Indeed, it is alleged in the Bill tha
The Chemical Foundation was an innocent party
that it was being used in this conspiracy. Ho
then can an admission by one of the alleged co
spirators or by an agent of one of the allege
conspirators be binding upon the innocent party

MR. ANDERSON: If your Honor please, I wi
reply. Counsel must have read this Bill very di
ferently from the way I read it.

MR. KRESEL: The trouble is you drew
and I read it.

MR. ANDERSON: Yes, and I think I know wh
it intends to say. The Bill does not expressly e
empt The Chemical Foundation from the charg
of conspiracy. It does not charge the Alien Pro
erty Custodian in specific terms with helping
bring about the conditions which resulted her
because we charged them then that these cond
tions were induced by the people who had an i
terest to serve by getting control of these patent
and that they induced the bringing about of th
conditions which resulted in the organization
The Chemical Foundation, that then, after th
was achieved, The Chemical Foundation had the
assignments procured and obtained the assig
ments from the officers of the Government
themselves in pursuance of such scheme and co
spiracy.

If that does not show that The Chemic
Foundation was in the conspiracy, I do not kno
how to charge it. They came into existence as
party of the conspiracy originally. They then b
came the agents and the active agents in carr
ing out the conspiracy, and they were the ha
used by the American Dyes Institute to get co
trol, the members of that Institute, for their ow
benefit, of this situation. And therefore it wou

be clear, that not only has Mr. Choate identified himself as general counsel of The Chemical Foundation in this very inquiry, and not only has he appeared as the most active and really the spokesman for The Chemical Foundation—and when I say that of course I am not reflecting upon Mr. Choate personally in any way whatever; he was counsel for these organizations—but he was the active spokesman, spoke for them on practically every occasion as I will point out here, and therefore necessarily anything that he would say as counsel for the American Dyes Institute is also binding upon The Chemical Foundation, which is nothing but the shell; and nothing is better settled than that the Court will look beyond the shell in a case of this kind to the real parties in interest and adjudicate the rights of the parties upon the actual facts.

MR. KRESEL: Colonel, I am sorry to say you are getting away from the point. I say that your Bill does not charge The Chemical Foundation with being a conspirator; you say it does. The best proof is the Bill. I ask you now to point to anything in your Bill which charges The Chemical Foundation as being in the conspiracy.

MR. ANDERSON: I would be very glad to oblige counsel, but I can not undertake to read this whole Bill to the Court again. I would practically have to go through the whole Bill, because these charges succeed each other——

THE COURT: Your theory of the admissibility of this evidence is predicated solely upon a conspiracy being both alleged and now established?

MR. ANDERSON: Yes, on that, and further than that, on the fact that Mr. Choate was an officer elected at the first meeting of The Chemical Foun-

dation and he was dealing with the affairs of The Chemical Foundation, was discussing their affairs here, and it is binding on him in every aspect.

THE COURT: I can not conceive of that, Colonel Anderson, although I can conceive that counsel may be counsel for certain concerns——

MR. ANDERSON: Under certain circumstances, yes, sir.

THE COURT (continuing): And then speaking for one only. Without determining that a conspiracy has been established in fact, I shall permit you to put this evidence of record under the general rule.

MR. ANDERSON: That is all I ask. I will read just a paragraph from page 113 of the publication to which I have already referred and which I have already described, in which Mr. Choate, speaking of The Chemical Foundation and of these patents, says:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose except to prevent, on the one hand, American manufacture, and on the other, imports from possible competitors abroad. But the Germans did not appear to be in the least afraid of the American manufacturer; they regarded our chemists with contempt. As late as 1917 they were still writing about the ridiculous assumptions of superiority of American chemists and the absurdity of their daring to think that they could introduce the industry and build it up in this country. So it was apparent that the patents were not aimed against the American manufacturer, but chiefly against the importer.
>
> "It then occurred to me—I say 'to me' personally, because I think the original germ of this branch of the thing was in my own mind—that a product patent that was worth

while for the Germans to procure as a means of keeping out Swiss dyes might be used by the United States to keep German products out. And so the question arose as to what could be done about it. As long as these products remained patented, we felt that the American dye industry could never get anywhere. These patented dyes had to be produced here sooner or later or the American dye industry would remain second rate and infant."

At page 115, the question by Senator Watson:

"When you took them over did you have in mind that 90 per cent of them were worthless?"

MR. KRESEL: Pardon me, Colonel Anderson. You read from page 113 only a portion of Mr. Choate's answer to a single question. Do you not think you should read the whole answer?

MR. ANDERSON: I do not, because the remainder of the answer is argument pure and simple, and I am merely trying to get in facts. I read a paragraph more than I expected to read because I wanted to give a fair connection; but I am introducing statements of fact and not arguments. I am not here to introduce Mr. Choate's arguments into the evidence.

MR. KRESEL: Would your Honor like to follow a copy of this as the Colonel reads?

THE COURT: No, you can put in such portions as you like when you are presenting your side of the case, Mr. Kresel.

MR. KRESEL: It does not give a fair picture to the Court to take a portion of a single answer and read it, and decline to read the full answer.

THE COURT: That may be true, and I can de-

termine that after I read what you also put in, and I shall draw no temporary conclusions about it.

MR. ANDERSON: If your Honor please, as a personal statement, I am inclined to be absolutely fair to Mr. Choate and I am reading more than in my judgment I am required by law to read.

THE COURT: You must each understand that you are not standing in the same position.

MR. ANDERSON: I quite appreciate that.

THE COURT: One is viewing the case from his client's standpoint and the other is not.

MR. KRESEL: Will Colonel Anderson, then, permit me to read the balance of the Answer?

MR. ANDERSON: I am sorry, but I cannot.

THE COURT: You can put it in after you have opened your case. You may proceed, Colonel Anderson.

MR. ANDERSON: The balance of it is argument. At page 115 Senator Watson asked:

> "SENATOR WATSON: When you took them over, did you have in mind that 90 per cent of them were worthless?
>
> "MR. CHOATE: I think so. But even a worthless patent is a very excellent obstacle to a new industry, because a man working out a given new process frequently finds that his process infringes on a patent that is not worth the powder to blow it up, but is a hindrance to a fellow working on the same line.
>
> "The inspiration occurred to Mr. Garvan, as the solution of this question, that the way to deal with it was to form a quasi-trustee corporation which could be organized and owned by the industries affected by these patents, and let that corporation buy the whole lump en bloc, together with every other chemical patent we could lay our hands on."

Further down on page 116, Senator Watson asked, "I thought you said take over all other

American patents?" To which Mr. Choate replied, "All other German chemical patents, as well as dye patents.

"SENATOR WATSON: You did not limit it to German patents? You said all other chemical patents, and I wondered whether you included all those hereafter taken out?

"Mr. CHOATE: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, The Chemical Foundation. Then there came up the question of how we were going to sell it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.

"We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in The Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group, a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in one block or in a half dozen blocks, or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else —and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance

value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to The Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of over-valuing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody, and the transaction was put through on that basis.

"Mr. Garvan became president of The Chemical Foundation on the absolute insistence of Mr. Hoguet and myself, because it was perfectly evident that the Foundation would, from the first, be, as it has been, the subject of attack from every German in the country, and because it was absolutely essential that the chief officer of that company should be familiar with German personalities in this country, and German methods; and there was no man in the country that knew them as well, or whom they feared so much, as Francis P. Garvan."

THE COURT: Colonel Anderson, did you tell me some days ago that I could escape in this case a determination of the validity of the seizure of those patents?

MR. ANDERSON: Oh, yes, because the question of the validity of the seizure can not really be raised in this case for the reason that the Government can not attack its own title, and The Chemical Foundation, claiming through the Government, certainly can not attack its title, because The Chemical Foundation has not any title.

In the second place, the original German owner can not attack the title of the United States because of the provisions of the Treaty ratifying and confirming the seizure and agreeing that this property should be held, under the Treaty, at least until Germany had complied with the conditions of the Treaty; and it is stipulated here that Germany has not complied with any of those conditions.

So far as this case is concerned, both the plaintiff and defendant claim through the same source their title; that is, seizure by the Alien Property Custodian. Therefore the question involved here is purely a question of whether there was a valid sale. If it was not, title revests in the United States and the United States holds it.

THE COURT: Although that may have been one of the steps, should we find a conspiracy, the seizure may have been one of the steps in the consummation of the acquisition of the patents by the industry.

MR. ANDERSON: Undoubtedly. And in that event, if it could properly be raised, legally raised by the proper person, there might be a very nice question raised as against the Government of the

United States possibly. I am not prepared to pass on that. It is too complicated for me.

But here the whole question is that, if the agents of the Government were guilty of a conspiracy in making this seizure, the Government can not be estopped by their wrong. In other words, the Government has contracted with the Government of Germany in a treaty, which is the law of the United States, that its title as against the German owner is good and the only question is as between the Government of the United States and its assignee.

MR. KRESEL: Would your Honor permit me to partake in this debate for a moment?

THE COURT: That is your privilege, Mr. Kresel, if you desire.

MR. KRESEL: The difficulty with the Colonel's position is that he says the seizure is not void while his Bill says it is. That is the only difficulty. He can overcome it, possibly.

I call attention to the allegation in the 23rd paragraph of the Bill, wherein it is charged, "That in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators, approached said Alien Property Custodian," and so on, and then if your Honor will turn to page 24, "And urged upon said Alien Property Custodian and his assistants, officers, and agents aforesaid, and others, the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents" and so on, "And urged upon them their pretended duty in the public interest to

seize, sell, or dispose of the same; and after numerous conferences," and so forth.

There you have an express allegation that pursuant to the conspiracy, the conspirators urged upon the Alien Property Custodian the necessity of making the seizure, and then in the next paragraph they go on and say that, for the purposes of said scheme or said conspiracy, they urged the Alien Property Custodian to select, for the purpose of said scheme and conspiracy, certain enemy-owned patents, and thereupon the patents so indicated by the conspirators—I read now from page 26—were so selected and seized and demanded by and taken into the custody and control of the Alien Property Custodian.

Here are express allegations of the Bill, that the seizure was urged upon the Alien Property Custodian and that the seizure was made pursuant to the conspiracy. If that was so, it was an illegal seizure; and if it was an illegal seizure, it cannot be the basis of any legal sale, and that is the way they have argued it in this Bill. They come to that conclusion.

MR. ANDERSON: No, no.

MR. KRESEL: The treaty which Colonel Anderson now refers to, if it is to be given any effect at all, in view of this complaint—and of course the United States can do away with any benefits that it has under the treaty if it wants to—but if it is to have any effect at all, I call attention to the fact that that treaty ratifies and confirms not only the title in the United States, but every act of the Alien Property Custodian; and by token of the same argument that counsel now uses, this very act that he is now attacking is confirmed by the treaty.

THE COURT: That is, as you understand the treaty, the seizure and sale stand or fall together?

MR. KRESEL: Exactly, sir.

MR. ANDERSON: I would like to be heard on that.

THE COURT: I will hear you now.

MR. ANDERSON: In the first place, the allegation of the Bill is that these parties—which for convenience we will refer to as the representatives of the dye industry or the American Dyes Institute—having in view the procurement of these patents for an unlawful purpose, induced the Alien Property Custodian to seize them.

Nothing is more common in the prosecution of a conspiracy than to get somebody to do a perfectly lawful act, to induce somebody to do a perfectly lawful act in a lawful manner, as one of the steps in the achievement of the ultimate unlawful result. That is all that the Bill charges. When the Alien Property Custodian had seized these patents, and this Bill charges that they induced him to seize these patents, which he had a right by law to do, and if he did it in the manner prescribed by law, his act was absolutely lawful up to that time and vested title in the United States; although the object of those who induced him to do it may have been unlawful, that could not have permeated his act as an officer of the United States.

If, however, after he seized those patents, he went further and co-operated in the organization of The Chemical Foundation with knowledge of its objects and purposes, which I do not now wish to argue, then he would be engaging in an unlawful act and also because he would then have adopted the conspiracy and been liable for every act in it *ab initio* from the beginning.

Also, if he made the sale and that sale was induced and brought about—although he may have been acting with the best intent and purpose in making the sale—by the persons who were beneficiaries of the sale, for an unlawful purpose, as a part of the conspiracy, the Government of the United States in the protection of its public rights and duties would have had the right to set aside that sale, no matter how good his faith was; because, bad faith inducement for a wrongful purpose is a fraud upon an officer of the United States, in plain and simple language, and that would set the sale aside. That is all the Bill charges. It is trying to avoid charging the Alien Property Custodian with an intentional fraud. The draughtsmen of the Bill thought the evidence showed that he could have been easily deceived and misled in this matter, and there was the allegation of the Bill. It is carefully drawn to protect fully the legal rights of the Government and try to avoid doing any injustice and draw it within the facts alone.

Let me take the second point. If the Alien Property Custodian and the Dyes Institute people had been guilty of a conscious, wilful and deliberate fraud in seizing this property—I do not say they were, understand that—I say, assuming —if they had been and had seized this property in a manner prescribed by law, it would have vested good title in the United States, because the United States as a Government could have availed itself of the legal action of its officer, which would have been in accordance with the statute, and repudiated his acts so far as they were wrong, as he is not representing the United States when he is committing a wrong. So that that would

have been a valid seizure, even if he had wilf
and deliberately participated in the fraud.

In so far as Germans are concerned, t
ratifies, so far as the Germans are concerned,
acts of the Alien Property Custodian where
had made a sale in accordance with the law or
position of any property in accordance with l
have not any right to come in here and prosec
this suit. You could plead that treaty agai
them any minute. But there is no treaty of
United States that can prevent the Governm
of the United States, as between itself and
officers, or as between itself and its citizens, fr
prosecuting its rights if its rights have been
vaded through the wrongful acts of its offic
or its citizens.

I agree entirely that in so far as the Ali
Property Custodian is concerned and the Germ
Government or the German citizen, the trea
stands between those people and the enforceme
of any right against the Alien Property Custodia
I will concede that for the purpose of this su
I am not interested in that question. I do n
express any opinion on it beyond this suit becau
I have not considered it. But, conceding tha
that does not prevent the Government of t
United States from enforcing its rights to th
property of which it has been wrongfully deprive
assuming that to have been the case. Therefor
all of this evidence, going back to the evidenc
bears directly on that question. I hope that a
swers your Honor's point.

THE COURT: Will you help me just one poi
further, Colonel Anderson, please.

MR. ANDERSON: Yes, sir.

THE COURT: Do you mind indicating to m
now just how the Parmele testimony is relevan

unless it is relevant to show the invalidity of the seizure. There was something that was a completely invalid seizure, if anything, was it not?

MR. ANDERSON: Yes, sir.

THE COURT: And will you also help me, if you will be so good, with respect to the testimony to the effect that Messrs. Squair and Barrows—I think those were the names of the persons who sat in the Patent Office—selected patents which were forwarded to the Alien Property Custodian for his action. I find difficulty in analyzing the testimony as I go along, and I would be glad to have you indicate to me as to whether that has any value apart from showing invalidity of seizure.

MR. ANDERSON: I shall answer your Honor's question with the greatest pleasure, with this reservation. I know your Honor will appreciate that it is extremely difficult for a lawyer to state all the bearing that testimony may have right offhand, because it takes his mind off one thing and right on to another. Therefore, I will state what occurs to me as one hearing that testimony, but I do not want to be limited to that.

First, as to the Parmele testimony, as I undertook to point out to the Court this morning, in a conspiracy charge of this kind which bears both upon the sale and the effect of the Sherman Act, any evidence which tends to show a disregard of the duties of a public officer involved in that transaction—what I may call a reckless disregard—is in itself evidence, the value of which must be determined in the light of the whole record, which tends to support the general charge of misfeasance as distinguished from malfeasance, perhaps.

The Parmele incident and others which have been cited, and others which will be introduced as

we go along, tend to show that the Alien Property Custodian, or the officers of the Alien Property Custodian, more properly speaking — because I think this record discloses the fact that Mr. Palmer, then Alien Property Custodian, knew very little of what was going on, as he was not at that conference and knew very little of it; it was brought to him through his assistants, as he was necessarily a busy man, and this was just before his appointment as Attorney General—that the officers of the Alien Property Custodian who were deeply interested in accomplishing this result—and we will assume for the sake of this discussion seeing only the benefit to the country—showed a precipitate haste and an utter disregard of the purpose, intent and really the provisions of the law on this subject, both in the seizure and sale of this property; and then being more interested in The Chemical Foundation than they were in the Federal obligation to the citizens of the United States, when the matter was brought to their attention, they neglected it for six months and then referred the complaining citizen, who was being seriously damaged, to The Chemical Foundation, a private corporation, for the ascertainment and adjustment of his rights, for which he had appealed to an officer of the Government of the United States. I say that that situation, taken in connection with the other facts in this record, manifest a dealing with this whole subject matter which is repulsive to a Court of Equity in its last analysis.

In that connection, the Barrows-Squair situation comes up. I have the highest regard for Mr. Barrows and Mr. Squair. They were discharging duties assigned to them. But when an officer of the United States, charged with the delicate duty

of administering the highest known trust, that is, property of citizens of another country brought into that country and acquired in that country under faith of its laws and its protection—

THE COURT: There is where I fail to follow you and that is where I wanted you to help me, as well as with respect to the validity of the seizure; because the minute you tell me that the United States is going to hold these patents whatever happens, that it is going to dispute any title of Germans under any and all circumstances, then it seems to me that I have so far been unable to follow you at that point, and I interrupt you only to get you to help me.

MR. ANDERSON: I will answer your Honor at once. Your Honor has entirely misunderstood me. I have not said the United States was going to hold these patents, and I have not said it was not going to hold them, because I haven't anything in the world to do with it.

THE COURT: I thought you told me that the United States was going to maintain its title to them at any and all cost.

MR. ANDERSON: It will as against the Chemical Foundation, the defendant; and it will maintain its title against anybody else so far as its legal right is concerned, I assume. But that is not holding these patents. And if I may suggest it, with all possible deference to your Honor, which I know you will understand, the question of what the United States Congress may do with these patents is not for me to consider and I respectfully suggest it is not a question for consideration here.

THE COURT: No question about it.

MR. ANDERSON: If the United States recovers these patents, it will be the duty of the Executive Department of the Government—I say that with-

out any hesitation, although it is not involved
this suit—to hold these patents until Congre
acts and to hold them as long as Congress elec
not to act; and the remedy against any misuse
these patents, if such misuse is possible, lies
the Congress of the United States where the pe
ple have put their confidence and their faith. Th
is the body they have created for the purpose
creating their policy and formulating their poli
in dealing with property of this country as well
that of other nations.

Under the Treaty with Germany, the Unit
States Government has the right to hold these pa
ents. It certainly has the right to hold them, un
Germany complies with the provisions of t
Treaty, which will obviously be many, many yea
as indicated by my distinguished friend tod
(Mr. Guthrie) in his noble address.

But I believe it to be true, turning to an e
amination of the Treaty of Versailles, to whi
reference has been made, that the United Stat
if it chose to do so might hold these patents pe
manently and might take this property and c
upon the German Government to redress its p
vate owners, pay its private owners.

Therefore, the United States has thr
courses open if these patents are returned, as
none of which have I, in my humble capaci
anything whatever to do.

One is: Congress has the power to retu
these patents to the owners under such conditio
as it sees fit and protect any existing licensee
and in fact this very bill goes to the very questi
of asking your Honor to protect any existi
licensees in their equitable rights to the exte
that you can do so. Congress can do so on su
conditions as it sees fit, or not return them at

Second, Congress may, feeling it in the interests of the United States, keep these patents for good and pass an act absolutely cancelling them and reimburse the German owners for their fair value. For myself, I say here that if Congress of the United States ever confiscates one dollar's worth of property of any alien, I hope it will have the courage and the sense of obligation and of justice, which has been recognized for two hundred years, if it does not want to give them back the property, deeming it injurious to the best interests of this country, to compensate the owners for the value of the patents without the slightest hesitation.

Congress can do more. It has the power of confiscation if it wants to exercise it. Under the Treaty of Versailles, I think it can exercise it. But it is my hope that it never will exercise it to the extent of not giving to the owner a just compensation for its property. It is to the credit of this country that it never has exercised that power except in a certain modified way during the Civil War, in the passions of a sectional strife; and I hope it never will.

That is my answer to that. Those are questions beyond the scope of this inquiry and of this court. The whole question that I am called upon to speak about for the Government is that the Government is entitled to this property back into its hands and its treasury, to be dealt with as Congress may direct, as prescribed by the act.

Now as to Mr. Barrows and Mr. Squair. If the Alien Property Custodian or his officers—he was not at the conference—were in such extreme haste to take over these patents, that he had to have the representatives of the industry so-called, or the largest beneficiaries of his public act, choose

those to be taken over, the fact in itself presents a very strong persuasive evidence that the influence of those who desired to secure this property was working to the end of securing all the property that would be beneficial to them, and they selecting it to be seized by the United States.

The act in itself, while I think out of the usual, to call on the representatives of interested commercial interests to exercise the high function of determining what alien property should be seized —even that unusual act, and I will not put it any stronger, might not in itself, standing alone, be the subject of more than a question or a criticism.

MR. KRESEL: Will Colonel Anderson permit me to interrupt him for a moment?

MR. ANDERSON: Yes.

MR. KRESEL: Has Colonel Anderson forgotten the testimony of Mr. Gordon who testified that they did not determine what should be seized but that it was the Alien Property Custodian who determined what should be seized?

MR. ANDERSON: Formally, yes.

MR. KRESEL: What is the use of making a statement here if it is not supported by the record?

MR. ANDERSON: I thank my friend. I thank him for calling my attention to it. He helps me every time he interrupts me. Mr. Gordon testified that whenever Mr. Barrows and Mr. Squair got copies of these patents and furnished them to him, he made out the formal demands, took them to Mr. Hoguet in large bunches, and he put his initials on them, took them to the Alien Property Custodian and the latter merely signed his name at the bottom as rapidly as he could.

MR. KRESEL: I am sorry, but pardon me, sir, as long as I have been drawn into this controversy,

I must make it straight. Counsel forgets again what the testimony was. The testimony of Mr. Gordon was that simply because Mr. Squair and Mr. Barrows sent in a copy, it did not follow from that that those patents were seized; that there were many that they sent in that were not seized. That was his express testimony. You will find it in the cross-examination. The judgment as to what should or should not be seized was exercised by him, Mr. Hoguet, and upon their O. K.'s, was signed by Mr. Palmer.

Mr. Anderson: I will have to leave it to your Honor to determine what the evidence is.

Mr. Kresel: But you make a broad statement of that sort and base an argument upon it, Colonel, when the fact is the other way.

Mr. Anderson: I do not understand the evidence as Mr. Kresel states it. I know he does, but I do not.

The Court: There was this further testimony, as I recall it. I am going on recollection and that is one of the reasons for my making the inquiry which led to this explanation. The further testimony of Mr. Gordon was that Messrs. Squair and Barrows were asked to go to the Patent Office and pick out patents which pertained to the chemical and dye industries because they were more familiar with that than any other persons. Now then, it seemed to me, if you were going to contend that their acts constituted the seizure, I was going to have difficulty in drawing the line which you suggest. If their acts did not constitute the seizure, then I could possibly see how the line might be drawn between the seizure and the sale.

Mr. Anderson: I was coming right to that. I do not contend for a moment that their act constituted the seizure. I would not contend that, be-

cause if they had by any act of theirs seized this property, it would have been absolutely void. They were not the persons who were formally authorized to seize this property. That was for the Alien Property Custodian.

MR. KRESEL: The Court did not mean that.

MR. ANDERSON: I did not mean to imply that, sir. But I will apply what I am going to say about Mr. Barrows and Mr. Squair. I meant to say that their act was one of a series of acts. These gentlemen got together in New York along in December or January—the correspondence is a little indefinite about that—and arranged for the Executive Committee meeting, that they must as they called it protect themselves against these patents. They sent a committee down to Washington for a conference. They had a number of conferences in New York and sent a committee down to Washington on the 27th of January. At that conference they said that they would have their counsel assist in making up a list of these patents. Mr. Gordon testified the haste was very great because they thought the right to seize them might terminate at any moment.

Their act in assisting in the seizure of these patents is one of the facts showing that this transaction was brought about by the men connected with the industry who desired, not unnaturally, to control these patents. The Alien Property Custodian made the seizure upon the list furnished him by Mr. Gordon. There is no question about that. But that list of Mr. Gordon's was suggested by the counsel for the very people who were interested, and who, we charge, were working to get control of these patents.

That is one of the transactions taken step by step that go to prove something which you can not

prove by direct testimony, a purpose and an object which have an illegal result. There is the weight of Mr. Barrows' and Mr. Squair's position in this matter as dealing with the development of this purpose and conspiracy; and it will be for your Honor to determine just what effect to give to the testimony.

I do not believe for a minute that the Alien Property Custodian quite realized what he was doing, going into this job. But it is a thing that could naturally have appealed strongly to a man, rather an appeal to the imagination. But there was not very much imagination on the other side of this game. If you read the American Dyes Institute minutes, you will find there was not any imagination either. It was a straight case of wanting to get control of these patents and protecting their investment.

THE COURT: Let me ask you one more question, Colonel Anderson. You have spoken of a decree to protect the licensees under these patents. Would that prayer go so far as to warrant a decree of this character, namely, that in the event that this or some Appellate court should determine that the price received was not adequate, was not proper, and, for the purpose of ascertaining your views, assuming the proper price was a million dollars or five million dollars,—that the decree should be such that the Chemical Foundation might be directed to pay that sum into the Treasury of the United States within a specified time or surrender the patents?

MR. ANDERSON: Your Honor is asking me a question, the first question I ever had to argue in the Court of Appeals in Virginia; and I answer "No," without the slightest hesitation. Your Honor's power in this matter is either to affirm

or set aside the sale. It is either good or bad. You can not make a new sale. There is no power in the court to make a new sale.

There is a possibility—I do not wish to commit the Government to any position on that matter at this time—but speaking in reply to your Honor's inquiry, it has occurred to the Department in preparing this bill and in their desire not to do any injustice to any interest concerned, that there was a possibility, if it should appear after the principles of this cause were settled, that certain patentees had expended considerable money under these licenses, or something of that kind, that they ought to have a right to intervene and set up whatever equities they might have. It might be that some such circumstances, although I am frank to say I can not work it out in my own mind at this time, might give the Court the right there to recognize some such equities in its final decree. I am not expressing any opinion on that. Frankly, I have very grave doubts on the subject, but the Government felt that it was but fair to have the Court put in a position to pass upon that and therefore to invite the intervention.

MR. KRESEL: If your Honor please, this is a very interesting question that your Honor has brought forward for discussion. The hour is late. I would like to be heard on it. If it is agreeable to your Honor, I should prefer to be heard tomorrow morning, or if your Honor feels it ought not to be further discussed, I will forego it.

THE COURT: I have asked these questions for enlightenment and I should be glad, if you care to indicate your views with respect to the matter, to have you do so tonight so that we might proceed tomorrow with a full day of testimony.

MR. KRESEL: Very well, your Honor. I shall

address my remarks simply to the question that I raised, namely, that by the Treaty of Peace between the United States and Germany, if it is to foreclose the question of seizure, the propriety of it or the legality of it, it at the same time forecloses any question as to the validity of this transfer.

We start out with the proposition that on the 25th of August, 1921, the United States and Germany made a treaty, and one of the clauses in the treaty is as follows: I am reading extracts from that treaty. Perhaps your Honor would like to follow me.

The provision is that Germany undertakes to accord to the United States and the United States shall have and enjoy all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles. That is the underlying agreement between the parties.

The next question is to determine what are the provisions of the Treaty of Versailles, the benefits and advantages of which the United States was to have, notwithstanding the fact that the United States did not ratify the Treaty of Versailles.

So, if your Honor will turn to the following page, your Honor will find that under Article 2 of this same treaty with Germany, the particular portions of the Treaty of Versailles the benefit of which was to go to the United States as specified. Turning to Article 297 of the Treaty, we find the following, that the question of private property rights and interests in an enemy country shall be settled according to the principles laid down in this section and the provisions of the annex thereto; that "As between the Allied and Associated Powers or their nationals on the one hand and

Germany or her nationals on the other, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in Paragraphs 1 and 3 of the annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty."

I will state to your Honor that none of those reservations has any reference to enemy-owned property.

The next point that arises is to find what was meant by the term "exceptional war measures" there. So we again turn to the Treaty of Versailles and your Honor will find on page 6 of this memorandum that your Honor has before you that Annex No. 3 to the Treaty defines the expression "exceptional war measures in the following terms, namely, that it includes measures of all kinds, legislative, administrative, judicial or others that have been taken or will be taken hereafter with regard to any property.

Now then, to return to Article 297. The provision is that "all acts taken under exceptional war measures shall be considered as final and binding upon all persons except as regards the reservations laid down." In Annex No. 1, the Treaty goes on to specify particular measures which the Treaty confirms and ratifies, namely, that "the validity of vesting orders and of orders for the winding up of businesses or companies, and of any orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed."

All orders of courts or administrative departments taken with reference to enemy property are specifically ratified and confirmed.

Then the Treaty goes on to say that:

"The interests of all persons shall be regarded as having been effectively dealt with by an order, direction, decision or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision or instruction."

And further:

"No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, decision, or instruction."

Now, how much more specific could a Treaty be, when it says that no question shall be raised? And when it says that no question shall be raised, it means that no question shall be raised by anybody. The high contracting parties to this Treaty, of which we were one, say:

"No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction."

What more specific language could President Wilson, who was there making this Treaty for what he thought was this country as well as others, have put into a Treaty to ratify the acts of this Government, represented by the President and the Alien Property Custodian, of disposing of enemy property than is put in here?

Now, if the Government is going to take advantage of this Treaty, and is going to say that notwithstanding the charge in its complaint that

the seizure of this property was induced by fraud and misrepresentation, and pursuant to a conspiracy, if they are going to say that such seizure notwithstanding that is valid because of this Treaty, because it is ratified by this treaty, how can the Government blow hot and cold? How can they say that this Treaty applies to the seizure and does not apply to the disposition of the property?

Now, that, your Honor, is our position in the matter. I trust that your Honor will not take this imperfect argument upon a very important question of law as stating entirely our views in the matter. It was called forth by a question from your Honor, which I know Colonel Anderson and I always welcome, but it seems to me that the Government cannot say that the seizure is good and the sale is bad, if they are going to stick to this Treaty.

MR. ANDERSON: May I have five minutes to close the matter tonight?

THE COURT: You are not going to cover any new ground?

MR. ANDERSON: No, sir. I am only going to reply to counsel, as rebuttal or surrebuttal.

THE COURT: Very well.

MR. ANDERSON: In the first place, as I understand the argument advanced by counsel for the defendant, it is that if the Alien Property Custodian had been guilty of the grossest fraud and misappropriated the funds in his hands, that this Treaty between the Government of the United States and Germany would have been a complete ratification and the Government of the United States could never call him to account, and I am not going to argue to this Court anything that leads to any such conclusion. That Treaty is a

Treaty between Germany and the United States. I have said that Germany could not question this matter as against the United States; but that Treaty does not undertake to ratify as between the United States and its officers an unlawful act. The Treaty must be construed with reference to the persons concerned and its purpose and object; that is obvious.

The Alien Property Custodian might yet be called to an account in a suit for an accounting for every cent of this money, and the Government of the United States could not be estopped by its Treaty with Germany; but Germany can not call him to an accounting and the citizens of Germany can not call him to an accounting; but the United States, dealing with its officers, is not estopped by a Treaty with Germany from requiring that officer to conform to its laws, or its Constitution either.

In the next place, so far as the seizure is concerned, the Supreme Court has held that a seizure by the Alien Property Custodian is final, that the seizure is final; his dealing with the property is another thing. Now, if he seizes fraudulently, the Government of the United States can always hold him to account. He is a servant of the people of the United States. He is their agent, and he must act in accordance with his agency, in good faith. But so far as a German is concerned, there is no obligation of the Alien Property Custodian to him; and here the Government of the United States, which is responsible as to aliens for all the acts of its officers, obtains from the German Government, for itself and its people, a complete ratification as to itself of all acts of its officers; but it would be a most remarkable circumstance to hold that that ratification went to the extent of

keeping the Government of the United States from requiring is own officers to account for their wrongs. That is all I want to say.

THE COURT: Colonel Anderson, would you say there would have been a remedy on the part of a citizen or subject of Germany against the Alien Property Custodian in the absence of this Treaty?

MR. ANDERSON: I recall something in the Trading with the Enemy Act itself which probably would have operated to the contrary. The rights are very limited under that Act. For instance, in the case to which I have referred—

THE COURT: I was wondering then, if there was any such power before the Treaty, just what the purpose of inserting that language in the Treaty was.

MR. ANDERSON: Just this, sir: That the only thing that the act of the Alien Property Custodian could do that would be his lawful acts. Now, if he acted outside the law, he was not acting as an officer of the United States. Therefore a German citizen would have a right to sue him for trespass, for dealing with this property as acting outside his lawful rights.

THE COURT: Will you help me just one moment. If he was acting outside of the scope of his power, I assume that the United States could ratify his act, possibly.

MR. ANDERSON: Undoubtedly it could.

THE COURT: What agency of the United States could make that ratification?

MR. ANDERSON: I should think if it were void, if it were a void act, it could not be ratified. If it were outside of his power, it could not be ratified. If it was within his power and done in an illegal manner, or voidable act, it is possible it might be ratified, with knowledge of the effect to ratify.

THE COURT: By what agency?

MR. ANDERSON: I should think there are some of his acts within the control of the President, probably could be ratified by the President, or some of them within the control of Congress could be ratified by Congress.

THE COURT: Has Congress ratified the seizure yet?

MR. ANDERSON: I would think that would be an open question.

THE COURT: I see. Then if I should find the seizure not within the scope of his power and unratified by Congress, then would not I have to say so? We will adjourn until tomorrow morning at 8:30 o'clock Standard Time.

(Whereupon, at 4:40 o'clock Standard Time, adjournment was taken until tomorrow, June 23, 1923, at 8:30 o'clock Standard Time).

THIRTEENTH DAY

Wilmington, Delaware,
June 23rd, 1923, at 8:30 o'clock A. M.,
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: May it please the Court, at the adjournment yesterday I had nearly concluded reading statements as admissions of Mr. Choate and I will resume that so as to finish it the first thing this morning. I refer now to page 134 of the publication from

which I was reading yesterday, entitled "Hearings before the Committee on Finance, United States Senate, Sixty-fifth Congress, Second Session, on H. R. 8078," more fully identified in the evidence of yesterday. At Page 124 this question is asked:

> "SENATOR WATSON: What do you mean by that?
>
> "MR. CHOATE: I mean to say that when importations come in of goods covered by patents we expect sooner or later that The Chemical Foundation will be paid royalties on the sale of those goods.
>
> "SENATOR WATSON: Why?
>
> "MR. CHOATE: Because the patent conveys to The Chemical Foundation the sole right to sell those goods in the country, and it is by the charge of royalties that The Chemical Foundation has to obtain the income on which it is to live and do its work."

I next read from the statement of hearings before Committee on Finance, United States Senate, on the proposed Tariff Act of 1921, H. R. 7456, "Dyes Embargo, Government printing office, 1922." It is at Page 512.

MR. KRESEL: Before Colonel Anderson reads any portion of this, I understand this is a portion of the statement made by Mr. Choate before this Committee. We object to it upon the ground that it appears from the record of this proceeding that Mr. Choate was at that time and on that occasion representing the American Dyes Institute as appears from the opening statement by Mr. Choate at page 403 of this book. It also appears at page 509 of this book.

We object, therefore, to any statements made by Mr. Choate in that capacity as not binding upon this defendant; and further, upon the ground that it is immaterial and irrelevant, and upon all the other ob-

jections that we have heretofore urged to this sort of testimony.

THE COURT: It may be read under our general rule.

MR. ANDERSON: I wish to state that I looked for a statement in this testimony as to the capacity in which Mr. Choate did appear. The heading inserted in the record, just the heading of his testimony, states that he appears—that Mr. Choate, representing the American Dyes Institute—but that, of course, is not a part of the testimony as suggested by counsel yesterday.

MR. KRESEL: That is true; but will you note that on the same page, Colonel Anderson, there is printed a brief of Joseph H. Choate, Jr., representing the American Dyes Institute.

MR. ANDERSON: Yes, but that is a heading also. I went through.

MR. KRESEL: No. I assume that is part of the brief.

THE COURT: Of course, the burden is on the Government to show that he was acting in some capacity to bind the defendant. The burden is on the Government to furnish that.

MR. ANDERSON: I would have read the capacity in which he appeared, if it had appeared in the evidence. I looked for it. I only wanted to explain my reasons for omitting that statement. In any event I am perfectly willing for that heading to appear, in the absence of any direct statement by Mr. Choate as to what capacity he did appear.

MR. KRESEL: I think, Colonel, you will find the direct statement of that effect in this statement made by Mr. Choate. Of course, you are not reading all of it, I understand.

MR. ANDERSON: Yes.

MR. KRESEL: May I also direct your attention to page 417 of this record, wherein Mr. Choate submitted,

according to the record there: "(The foregoing was submitted by Mr. Joseph H. Choate, Jr.)—meaning this brief—"representing the American Dyes Institute, of which the following companies are members"—and then there is given a long list of members.

I do not find at any pont on this occasion where Mr. Choate undertakes to be speaking for The Chemical Foundation.

MR. ANDERSON: That was my understanding, and I did not want to read from headings, because counsel objected only yesterday, but I am perfectly willing to say that what the record seems to disclose, without a direct statement from Mr. Choate, that he was appearing as counsel for the American Dyes Institute on this occasion. I think that is a fair statement of the record.

MR. KRESEL: All right.

MR. ANDERSON: And the question of legality is another one.

MR. KRESEL: May I interrupt you once more? If you will pardon me, at page 417, it also appears that Mr. Choate appeared for eight concerns which are stated to be not members of the American Dyes Institute. You see that list there, do you not?

MR. ANDERSON: That is all right. If you state it, I will not look it up. It does appear that he appeared for the American Dyes Institute, though.

MR. KRESEL: Yes, it does.

MR. ANDERSON: Now, on page 512, following a discussion of the organization of The Chemical Foundation, Senator LaFollette asked the question:

> "Please give me again, will you, a description of the chief assets of this company?
>
> "MR. CHOATE: The chief assets of the company are patents and cash.
>
> "SENATOR LAFOLLETTE: What patents are those to which you refer?
>
> "MR. CHOATE: Those are the patents pur-

chased from the Alien Property Custodian, former German patents taken over by the Alien Property Custodian.

"SENATOR LAFOLLETTE: What number are they?

"MR. CHOATE: Four thousand nine hundred and four originally. Some have expired: 466 have expired up to July 1st of this year. I should state that of these only 4,393 are still in the hands of the foundation, the small balance having been reassigned to persons who were found to be really entitled to the patents by reason of transactions which have taken place before the war and which were not known at the time the patents were seized by the Alien Property Custodian and sold to the foundation.

"SENATOR SMOOT: Who proved to be American citizens?

"MR. CHOATE: Yes.

"SENATOR SMOOT: When a patent of that character was transferred to an American citizen, was the foundation paid back by the Government the amount that they originally paid for that patent?

"MR. CHOATE: I think not. I do not recall, but I do not think any payment was made.

"SENATOR SMOOT: Then the Foundation paid them a lump sum?

"MR. CHOATE: Paid them a lump sum. It was impossible to allocate to any patent a particular value."

On page 518, Senator Smoot asked Mr. Choate the following question:

"SENATOR SMOOT: As an attorney of The Chemical Foundation, do you think that $250,000 was all that those patents were worth?

"MR. CHOATE: I think it was not all that they would have been worth to a private purchaser unlimited in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there outside of the nuisance value that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that The Chemical Foundation, both by the terms of its charter and by the terms of the foundation, is absolutely limited in the use of these patents; so that it can not profit beyond the necessary sum to pay a 6 per cent dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue non-exclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

I next read a statement of the same gentleman from a hearing of the Sub-committee of the Committee on Judiciary of the United States Senate, Sixty-Seventh Congress, Second Session, "Pursuant to Senate Resolution Seventy-seven creating a Special Committee to investigate the expenditures made in behalf of various propaganda and in the maintenance of lobbies in Washington," volume of hearings published by the Government entitled "Alleged Dye Monopoly" with the additional title which I have read.

I shall read from page 528—I should say that at 525 of this volume, the heading inserted in the volume states that it is the testimony of Mr. Joseph H. Choate, representing the American Dyes Institute; but again, I am unable to find a direct statement from Mr. Choate to that effect, and I assume that the representation of the Committee is embodied in the head-

ing, and that he did represent the American Dyes Institute at that hearing.

MR. KRESEL: Without repeating the grounds of our objection, your Honor, may it be noted we object to this reading upon the same grounds as urged to the other.

THE COURT: And all statements made before this or any other committee I assume to be objected to on the same ground?

MR. KRESEL: Yes, your Honor.

THE COURT: The same ruling.

At page 528:

"THE CHAIRMAN: Yes, you may proceed.

"MR. CHOATE: Of course, Mr. Chairman, I have been familiar with almost all of the activities of The Chemical Foundation from the beginning, because I had a part in its organization, and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

"In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the Autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.

"THE CHAIRMAN: You went as the representative of what company or association?

"MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by

them to present to the Congress and the appropriate committees the case for special protection for the American Dye Industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date.

"In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports which they had received as to the activities of the Reparation Commission under those sections of the Versailles Treaty which gave the Reparation Commission certain powers in the matter of dyes. The information which the Legislative Committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the advisory committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the committee."

It was received and marked as an exhibit.

In the absence of my memorandum, I will not read further at this time from these hearings. I may find something else that I want to put in later.

I will ask to call Colonel Herman A. Metz.

HERMAN A. METZ.

HERMAN A. METZ, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Herman A. Metz; age, going on 56; New York City, Borough of Manhattan. I am President of H. A. Metz Laboratories and other corporations.

Q. 2. You say you are President of H. A. Metz Laboratories and other corporations. Will you state more fully what other corporations and the business generally of those corporations?

A. H. A. Metz Laboratories are manufacturers of pharmaceutical products. The Consolidated Color & Chemical Company, of which I am President, manufactures dyestuffs and intermediates, and other incidental compounds for textile purposes.

Q. 3. Out of consideration for the stenographer, I will ask you to talk as slowly as you can, without interrupting your thoughts.

A. The Central Dyestuff & Chemical Company, Newark, New Jersey, of which I am Vice-President and Treasurer, manufactures dyestuffs and intermediates. The Textile Leather Company, of which I am President, makes artificial substitutes for leather. There are several others, Colonel, if you want me to give them to you.

Q. 3. (Continuing.) Go ahead.

A. H. A. Metz & Company, Incorporated, dealers in dyestuffs and chemicals.

I am a director in the Interborough Rapid Transit Company, New York City, representing the public, I might say incidentally, not as a stockholder. There are a number of others, not allied with dyestuffs and chemicals.

Q. 4. Have you held any public office?

A. Yes, sir.

Q. 5. By election or otherwise; if so, state what?

A. I was elected Comptroller of the City of New York. I was a member of Congress and was appointed on various Commissions and Boards.

Q. 6. How long did you serve as Comptroller of the City of New York?

A. Four years.

Q. 7. During what time?

A. 1906 to 1910.

Q. 8. Where were you born?

A. New York City.

Q. 9. How long did you serve in Congress, and at what time?

A. Sixty-third Congress, 1913 to 1915.

Q. 10. How long have you been engaged in or connected with the business of the manufacture of pharmaceuticals and other similar products to which you refer?

A. The manufacture, only since 1916; but the handling and importing and selling for about forty years.

Q. 11. You have been handling, importing and selling these products for about forty years?

A. Over forty years connected with the firms doing it.

MR. KRESEL: I did not get that last statement.

THE WITNESS: Connected with the firms doing it. I started as office boy in the firm originally.

Q. 12. Your whole life, then, has been devoted to this business?

A. Yes, sir.

Q. 13. Have you ever studied chemistry?

A. Yes, sir.

Q. 14. Are you a chemist?

A. I am not a chemist, but I studied chemistry.

Q. 15. State what your experience has been as a student of chemistry?

A. I was a student at Cooper Union about four years. I was assistant in the laboratory for at least two years and I worked in the laboratories and plants

after that right along until a few years ago. I got out a number of chemical patents.

Q. 16. What training other than you have stated have you had in practical chemistry, and in connection with pharmaceuticals, the manufacture and sale thereof?

A. Well, seeing the processes carried out, helping to carry them out, devising methods, and running the business successfully.

Q. 17. Have you engaged as a merchant in selling these supplies?

A. Yes, sir.

Q. 18. How have you sold the supplies? I mean do you sell wholesale, retail, or what?

A. Any way people want to buy.

MR. KRESEL: Which supplies are these, Colonel?

MR. ANDERSON: I referred to pharmaceutical supplies which he has imported or manufactured.

MR. KRESEL: Pharmaceuticals only, you are talking about?

MR. ANDERSON: I am talking about pharmaceuticals and supplies which he has described in an earlier answer as being manufactured by him —medical supplies and pharmaceuticals.

THE WITNESS: Pharmaceuticals that were sold—

MR. KRESEL: Pardon me a minute, I want to get this straight. The witness has stated, as I understand it, that he has dealt not only in pharmaceuticals, but also in dyestuffs.

MR. ANDERSON: Yes.

MR. KRESEL: I simply want to know what it is he is now talking about.

Q. 19. Having heard the suggestion of counsel, Colonel Metz, I would ask you to state to the Court briefly but comprehensively the character of your prac-

tical experience in handling the dyestuffs or chemicals or pharmaceuticals, indicating which as far as you can, the sale and disposition thereof. I want to get your practical experience, a general view of it.

A. The pharmaceuticals are sold to the Government, State Boards, hospitals, wholesale druggists, retail druggists and physicians direct.

Q. 20. For how long a period?

A. Ever since I have been in business practically. Even since we first took up the handling of pharmaceuticals.

Q. 21. When you speak of pharmaceuticals you include medical supplies and chemicals used in medical supplies, do you.

A. Yes, sir.

Q. 22. You spoke of having connection with the dyestuff industry?

A. Yes, sir.

Q. 23. To what extent, practically, have you dealt with or had dealings with that?

A. I travelled for ten or fifteen years among the mills selling direct to the consumers, manufacturers of woolen, cotton, silk, paper, leather and other goods that use dyestuffs. I sold myself in the mills, demonstrated the use of them in the mills, and supervised the selling by a corps of salesmen in the branch houses.

Q. 24. By those mills you are now referring to dyes and dyestuffs mills?

A. Dyestuffs and mill products.

Q. 25. Did you, prior to the war, import and distribute or sell in this country products disposed of under the trade names of salvarsan, neo-salvarsan, and novocaine, or any of them?

A. All three of them.

Q. 26. All three of them?

A. Yes.

Q. 27. For approximately how long a period did

you engage in the importation, sale and disposition of these articles?

A. I believe they appeared in the market first about 1911 or 1912, these products.

Q. 28. How long did that period of importation continue; was it stopped by the war?

A. Well, it was not stopped until 1916, November, 1916, I obtained the last shipments from Germany on British permits allowing them to pass the blockade.

Q. 29. After the United States went into the war, did you or any of your companies, and if so, state which, apply to the Federal Trade Commission for license to use the patents or trade-marks, under Section 10, of the Trading with the Enemy Act?

A. After the Trading with the Enemy Act was passed my companies applied for licenses to manufacture the three products.

Q. 30. Could you state the numbers of the licenses issued to you by the Federal Trade Commission? I will state that all these documents are in evidence and I will have you identify them as soon as I can get them.

A. I was granted license No. 3 for making salvarsan, No. 3-A for making neo-salvarsan, and No. 4 for making novocaine, granted to the Farbwerke-Hoechst Company, the name under which I was doing business at that time.

Q. 31. When, approximately, was that. We will identify the actual date.

A. That was, I think, the beginning of 1918 when they issued the licenses. They were all cancelled and new ones taken by H. A. Metz Laboratories, Inc.

Q. 32. Do you recall the dates that the transfer was made from the first company that you mentioned to the second?

A. No, but the record will show. I obtained licenses 34, 34-A and 35 in lieu of the original licenses.

Q. 33. Do you know the numbers of the licenses last issued to the—

A. Yes, sir, 34, 34-A and 35.

Q. 34. Those were issued to whom?

A. H. A. Metz Laboratories, Inc.

MR. ANDERSON: I will have to wait until I get those.

THE WITNESS: I have certified copies, Colonel, of the licenses. The originals were here yesterday. I saw them here yesterday.

THE COURT: The witness says he has certified copies.

MR. ANDERSON: They are not full licenses. I have looked at them. They do not carry the patents and the exhibits, and they are the ones that we wanted.

THE WITNESS: The originals do.

MR. ANDERSON: I have sent for the originals, and I will use them as soon as I get them.

Q. 35. While waiting for those papers, I wanted to ask you, whether in addition to the pharmaceuticals you spoke of and your importing business prior to 1916, did you manufacture dyestuffs, and if so, to what extent, generally?

A. I manufactured dyestuffs in the Consolidated Color & Chemical Company and in the Central to more or less large extent before 1916, but not prior to 1914.

Q. 36. Between 1914 and 1916, you manufactured?

A. We increased daily our manufacture in our line of colors.

Q. 37. How long did you continue that business?

A. Up to date.

Q. 38. You still continue that business?

A. Oh, yes.

Q. 39. And are you president of that company?

A. I am president of the Consolidated, and vice-president and treasurer of the Central, and I am interested in others, but not as an officer.

Q. 40. I believe you said, Colonel Metz, that the original licenses issued by the Trade Commission to one of your companies, the name of which I do not recall—

A. Farbwerke-Hoechst Company.

Q. 41. Were?

A. Surrendered.

Q. 42. —were surrendered by you?

A. By me, and the new ones taken; that is, the new corporation which started just before we went into the war.

Q. 43. And the new licenses were taken out as a re-issue by the H. A. Metz Laboratories, Inc.?

A. Yes, sir, and now manufacturing.

Q. 44. You still hold those licenses, do you?

A. Yes, sir.

Q. 45. There was introduced in evidence on yesterday an original, and substituted a photostat copy of Federal Trade Commission license No. 34-A, issued to H. A. Metz Laboratories, Inc., under patent No. 13,848 re-issue?

A. That is neo-salvarsan.

Q. 46. The re-issue patent being dated December 15, 1914, the date of the license being July 1, 1918. I will ask you if you would examine that and see if that is one of the licenses to which you refer as having been issued to the H. A. Metz Laboratories, Inc., upon the surrender of your original license?

A. That is a certified copy of the license.

Q. 47. And you still hold that license?

A. Yes, sir.

Q. 48. That is, the H. A. Metz, Inc.?

A. I am working under it. That is the neo-salvarsan. H. A. Metz & Company.

Mr. Anderson: H. A. Metz Laboratories, Inc. Thank you very much.

The Witness: Mr. Choate knows more about my affairs than I do.

Q. 49. Now, there was another license introduced in evidence of yesterday, No. 34, under patent No. 986,148, dated March 7, 1911, date of the license July 1, 1918. Is this No. 34 the license issued to your Company in lieu of the original license of 1918 issued to your former company and which you surrendered for transfer?

A. Yes, sir. This was for salvarsan.

Q. 50. There was also introduced in evidence on yesterday a license by the Federal Trade Commission, No. 35, under patent No. 812,554, dated February 13, 1906, date of the license July 1, 1918. Is that one of the licenses issued to the H. A. Metz Laboratories, Inc., to which you referred in lieu of the original license issued to another corporation you described, and surrendered?

A. Yes, sir. That is for novocaine.

Q. 51. The three licenses which I have just had you identify are the three licenses of the Federal Trade Commission under which you now operate?

A. Yes, sir.

Q. 52. There were introduced in evidence on yesterday the original exhibits of three licenses issued by the Federal Trade Commission to Farbwerke-Hoechst Company, which licenses were issued under the following patents, that is to say: No. 3 under patent No. 986,146, dated March 7, 1911, date of license, November 26, 1917; No. 3 (a) under patent No. 13,848, re-issue, dated December 15, 1914; and No. 4. under patent No. 812,554, dated February 13, 1906, date of license, December 17, 1917; these three licenses being identified in evidence respectively as follows:

No. 3 as Plaintiff's Exhibit No. 220; No. 3 (a) as Plaintiff's Exhibit No. 221; and No. 4 as Plaintiff's Exhibit No. 222.

Will you take those three papers and state whether they were the three licenses oiginally issued to that company as you have testified?

A. They are the copies of the licenses originally issued and are similar to those later issued, except that I believe the conditions for testing were somewhat changed later on in the later licenses by the Public Health Service; and made a little more stringent.

Q. 53-54. And such changes will appear on the faces of the licenses?

A. In the faces of the licenses. I think they were changed before the new ones were issued.

Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

Mr. Kresel: I have to object to such an indefinite question.

Q. 56. State what you did when you got the license. I will put it that way.

Mr. Kresel: He may have gone around the corner and bought something, but that is not material. It seems to me you ought to ask him some specific question.

Mr. Anderson: I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did.

The Court: Would you mind telling me, Colonel Anderson, what you propose to bring out by this group of questions.

MR. ANDERSON: I propose to bring out that this witness proceeded to exercise his rights under these licenses by doing the things therein authorized to be done and as a manufacturer or seller of this material, he carried on certain business. It has been objected to and I recognize that this kind of an examination is necessarily very technical. To ask him for his conclusion is one thing. To ask him what he did is another.

MR. KRESEL: Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all.

MR. ANDERSON: No, all I wanted Mr. Metz to do was to say what he did under these licenses.

THE COURT: Whether he operated under these licenses or not.

MR. ANDERSON: Whether he operated under them has been suggested is a conclusion. So I asked him what he did.

MR. KRESEL: I have no objection to putting the question in that form.

THE COURT: You say you have no objection. Does that go to substance as well as form?

MR. KRESEL: Yes.

A. I continued to operate; I was operating prior to the licenses and continued the manufacture of the goods described in the licenses and to sell them.

Q. 57. Take each license and tell what you did as a licensee under that license?

A. Under license 3, I manufactured salvarsan. Under 3-A and 34-A I manufactured neo-salvarsan. Under 4 and 34 I manufactued novocaine—or rather 35. No. 4 was neo and 35 was novocaine—4 and 35.

Q. 58. What did you do with the product so manufactured?

A. Sold them to the consumers, to the Government, physicians, hospitals.

Q. 59. Did you sell it under any trade name or trade-mark?

A. Yes, sir; under the conditions of the license I was allowed to use my trade names in addition to the one prescribed by the license.

Q. 60. What trade name or trade-mark did you use in each case?

A. Under licenses 3 and 34 I used salvarsan and the generic name "arsphenamine" which was prescribed by the Public Health Service. Under license No. 3-A and 34-A I manufactured neo-salvarsan and neoarsphenamine.

Q. 61. Under what trade name did you sell it?

A. As neosalvarsan.

Q. 62. Under the other licenses which you have described, Nos. 4 and 35, what did you do?

A. I manufactured and sold novocaine and added the generic name of frocaine, which was prescribed by the Public Health Service.

Q. 53. Where did you manufacture these products which you have mentioned under these licenses?

A. In the plant and the laboratories of H. A. Metz Laboratories, Inc., in Brooklyn, 644 Pacific Street.

Q. 64. Can you state of your knowledge the amounts of royalties paid by you to the Alien Property Custodian under the licenses of the Federal Trade Commission by years?

A. Yes, sir.

Q. 65. Will you state it?

A. I have to refer to memoranda.

Q. 66. If you made the memoranda, yes; it is all right.

A. I saw it made and made it myself to some extent.

Q. 67. By year?

A. The salvarsan and neosalvarsan were grouped. orandum, but I have the receipts of the Custodian.

Q. 68. How much? State the years, beginning with the earliest year and on down.

A. Under licenses 34 and 34-A in 1919 we paid the Alien Property Custodian, on those licenses, $34,711.16.

The payments, the amounts, are grouped in this mem-

Q. 69. You say the year 1919; for what period of that year?

A. The year 1919, the full period.

Q. 70. That is for the full period of the year 1919. Proceed.

A. In 1920 we paid $51,485.79; in 1921, $37,145.56; in 1922 $16,512.67.

MR. KRESEL: I did not get that last figure.

THE WITNESS: In 1922,, $16,000; it only ran up to July 1, 1922.

MR. KRESEL: How much?

THE WITNESS: $16,512.67.

Q. 71. That was up to July 1, 1922?

A. Including July 1, 1922. Up to July 2nd, practically. July 1st was included as a separate day. I know in novocaine we paid in 1919 $4,863.74, in 1920, $4,750.14, in 1921, $5,025.37, and in 1922, $2,800.29, being five per cent of the gross sales.

Q. 72. That last was up to the 2nd of July?

A. July 2nd, the same way. Making a total of royalties—if you want that.

Q. 73. Yes.

A. Of $139,855.18 on the salvarsan and neosalvarsan and $17,259.54 on the novocaine.

Q. 74. Mr. Metz, do you know of your own knowl

edge whether there were any other concerns licensed by the Federal Trade Commission?

A. Yes, sir.

Q. 75. To use these same patents and trade-marks?

A. Yes, sir.

Q. 76. Could you state how many and what they were?

A. There were three licenses for salvarsan and neosalvarsan and, I think, four, including myself, for novocaine.

MR. KRESEL: Will you fix the time of that, please?

THE WITNESS: I do not know. The records will show that.

Q. 77. You do not know the date?

A. No.

MR. ANDERSON: I will state to counsel that the original licenses showing that patent issue and date are in the record. I only want to connect them up. They are all in the evidence.

Q. 78. Mr. Metz, are you personally familiar and can you speak of your own knowledge of the amounts of your receipts, your gross receipts and net profits from the sale of salvarsan, neosalvarsan and novocaine prior to the issuance to you of Federal Trade Commission licenses—that is, on your importations?

A. I can get it by referring to my notes, taken from my accountant's records handed to me, and which I saw made up.

Q. 79. Those notes were made up under your direction and for your use?

A. Yes. I supervised them.

MR. KRESEL: Is the question that he should tell you the figures now?

MR. ANDERSON: If he knows. He has said yes, of his own knowledge.

MR. KRESEL: I am assuming that he knows it. Do you now ask him for the figures?

Q. 80. Will you now please state the amount of your gross receipts and the amount of your net profits from the sale of salvarsan, neosalvarsan and novocaine, respectively, during the years in which you imported them, prior to your license by the Federal Trade Commission?

MR. KRESEL: To that we object, if your Honor please, upon the ground it is immaterial and irrelevant, not binding upon the defendant, and can in no way have any bearing upon the value of the patent. I assume that this evidence is being offered as some evidence of value.

MR. ANDERSON: You are quite right.

MR. KRESEL: Any figures that Mr. Metz may present with reference to his business prior to the war, which was business of his own and private, and not known to anybody else, the Alien Property Custodian or the Government or The Chemical Foundation, which was not in existence at that time, is immaterial and irrelevant.

THE WITNESS: It was known to the Alien Property Custodian.

THE COURT: Just a moment, Mr. Metz.

THE WITNESS: It is in the books.

MR. ANDERSON: My idea was, if your Honor please—and I think it is sound—that in considering the very intangible thing whch we call value any facts showing the earnings on a property of this kind under a patent, at any period during the use of the patent, would be relevant evidence. Its value might be to some extent affected by the circumstances, intervening conditions and various other things; but it is one of the facts to be considered in arriving at the inquiry here—which is not a queston of establishing an actual value,

but a question of establishing whether the price paid in this case had any relation to value.

Now, in that particular case, I think this evidence might be considered. I recognize that there are certain limitations that may be argued with reference to it and certain matters which may go to its weight, as to which I do not wish to discuss, but I think the evidence is relevant and material on this question, on which the Courts allow very great latitude on account of the various elements entering into it.

THE COURT: Colonel Anderson, I gather that the information that you are now trying to obtain from this witness is as to any source of information from which the purchaser or seller of these patents in the year 1919—

MR. ANDERSON: I think I know what your Honor's inquiry is. Of course, I would not suggest it, but I think it is a very natural one.

The Alien Property Custodian, I take it, in view of the facts disclosed in this case, would have had opportunity to gather that information without difficulty if he wanted to.

THE WITNESS: He had it, Colonel.

MR. ANDERSON: Beg your pardon.

THE COURT: Do not answer again until you are interrogated. Do not forget that.

THE WITNESS: All right, sir.

MR. ANDERSON: The situation is this: I take it, if your Honor please, that the question of value is a question largely of fact. Now, the fact that the purchaser may not have had information as to value might affect what he was willing to bid, but would not affect the value. It is a duty of the person occupying the position of a Trustee—

THE COURT: I understand your theory. It is only an answer to the direct question that I wanted.

MR. ANDERSON: I do not know further than this: That I think under the law this information will be clearly available to the Alien Property Custodian.

THE COURT: I will express no final view as to either the admissibility or inadmissibility or weight of the testimony, but will reserve that until the ultimate finding.

MR. ANDERSON: I recognize the questions that may arise.

THE COURT: You may put it in under the general rule.

MR. ANDERSON: Now, will you read the question, please. (Q. 80 repeated as recorded).

MR. KRESEL: Before the witness answers the question, I suggest to the Court and counsel that it might be well to develop with the witness as to the basis upon which he was dealing with these products at that time.

MR. ANDERSON: I thought he testified to that.

MR. KRESEL: Whether he was agent or principal in the transaction, so that we might be able to judge the value of that.

MR. ANDERSON: I am quite willing.

Q. 81. Mr. Metz, I understood you to say that you imported salvarsan, neo-salvarsan and novocaine for certain years which you stated prior to the war and into the early period of the war, from abroad; is that true?

A. Yes, sir.

Q. 82. Now, I will ask you to state, taking up first salvarsan, what were your gross receipts and net profits by years, if you can state it, from the sale of salvarsan which you imported during the period that you have described?

A. I can not give you salvarsan separately. I have

them both together, both salvarsan and neo-salvarsan.

Q. 83. All right. Give them both together.

A. They went together always on our books. I have the figures from 1913 to 1917. The Farbwerke-Hoechst Company, at that time the agents and manufacturers of the product made in Germany.

MR. KRESEL: I ask that the statement that the Company was the agent be stricken out as the conclusion of this witness.

MR. ANDERSON: I have no objection, sir. We will stop discussion on that.

THE COURT: So ordered.

Q. 84. Now, this Farbwerke-Hoechst Company, was the same Company which is described in the original licenses issued by the Federal Trade Commission?

A. Yes, sir.

Q. 85-86. It was an American corporation, was it not?

A. Yes, sir.

Q. 87. And you were the head of that corporation?

A. And owned all the stock, yes, sir.

Q. 88. It was practically your corporation?

A. Yes, sir, and is still.

Q. 89. State then, by years, what you made through importations by that corporation, that is, your receipts and net profits on salvarsan and neo-salvarsan, for the period of importation?

MR. KRESEL: I understand that he is about to give gross receipts and net profits; is that it?

MR. ANDERSON: That is what I have asked for.

A. The sales in 1913 of salvarsan and neo-salvarsan were $383,818.74.

MR. KRESEL: May I interrupt you a moment? Do you understand that those are the gross receipts that you are talking about. When you say sales, you mean gross receipts received from sales?

THE WITNESS: Gross sales, the amount received from sales.

MR. KRESEL: All right.

Q. 90. Your gross receipts from the sales of salvarsan and neo-salvarsan imported by you and sold in the United States during that period?

A. 1913.

Q. 91. 1913, amounted to how much?

A. $383,818.74.

Q. 91-a. What were your net profits during that year from those sales?

A. The net profits that year were $153,124.32.

Q. 92. Now, take the next year and give the same information of gross receipts and net profits?

A. In 1914, $502,986.77; net income $244,279.35.

Q. 93. Would you mind calling those figures over again?

A. $502,986.77; net income, $244,279.35.

Q. 94. That was for the year 1914?

A. 1914.

Q. 95. Now, take the year 1915?

A. 1915, $601,151.94.

Q. 96. What were your—

A. Sales?

Q. 97. Gross sales or receipts?

A. Receipts from sales?

Q. 98. From sales of this imported product which you have described?

A. Yes, sir; and the net income was $361,470.40. 1916, $969,176.41; net income $434,723.08.

Q. 99. And your importations were discontinued in 1916, as I understand it?

A. The end of 1916. We got the last shipment, November 1916, on permits.

Q. 100. Now, Mr. Metz, in order to follow that subject through, I will ask you to go on with salvarsan and neo-salvarsan and state your—you have al-

ready stated your sales and net profits under the license?

A. You have not got 1917 yet. I want to give you 1917, Colonel.

Q. 101. All right, 1917.

A. In 1917, we sold the stock we had on hand and some of the manufactured stuff.

MR. KRESEL: One minute, please. That has not been asked. All you have been asked for are figures. Please give that.

A. (Continuing) The figures are $628,753.80. The net income was $289,742.86.

Q. 102. Did you import any of this material, salvarsan or neosalvarsan in the year 1917?

A. No, sir. That was the stock that we had from 1916 and what we made here at that time.

MR. KRESEL: I ask that everything but "No, sir" be stricken out.

THE COURT: Motion granted.

Q. 103. Did you have any stock on hand at the end of your importations in 1916?

A. Yes, sir.

Q. 104. Did you sell that stock during 1917?

A. Yes, sir.

Q. 105. Now take novocaine by years and in the same manner, give the same information?

A. I ought to have qualified, Colonel, that some of these sales included product bought in the United States, made in Philadelphia, which we handled when the importations were scarce.

Q. 106. You mean 1917 sales?

A. I mean in 1917, yes; 1916 and 1917; some that we manufactured in 1916 and 1917.

Q. 107. The figures you have given represent the gross receipts and net profits of your business.

A. On those products.

Q. 108. Explained in the manner just indicated

between importations in the United States in the later period?

A. On those two products.

Q. 109. Now, take novocaine and give the same information for the same periods, if you can do so?

A. Novocaine was very small. Here they are. The novocaine sales began in 1906.

Q. 110. Give such information as you can give, giving the gross receipts and net profits in each year for the period.

Mr. Kresel: Do I understand that he is about to give the figures with reference to novocaine imported?

Q. 110. (continuing) I asked you about novocaine imported.

A. That was all imported at that time. I have not the figures in dollars, but I have the amounts. I can not give you the figures in dollars. I have not got them. I have simply got the amounts, because those books—

Mr. Kresel: That is an answer; you have not got the figures.

A. (continued) Not the dollars. I can give you totals and the amounts and quantity for each year.

Q. 111. Give us the totals and quantity, and then I will ask another question.

A. I will give you the quantities in detail.

Q. 112. All right, give us the quantities.

A. In 1906, the first year, we sold in five-gram bottles 210 bottles of five grams each, that is, 17 ounces. In 1907 we sold 128 five-gram bottles, in 59 ounces and 14 pounds, single pound packages. In 1908, 370 five-gram bottles, and 84 ounces and 47 pounds. In 1909, 760 five-gram packages, 234 ounces and 51 pounds. In 1910, 1133 five-gram bottles, 368 ounces and 67 pounds. In 1911, 1503 five-gram bottles, 552 ounces and 48 pounds. In 1912, 2580 five-gram bottles, 867 ounces

and 74 pounds. In 1913, 5746 five-gram bottles, 1798 ounces and 144 pounds. In 1914, 8562 five-grams, 3275 ounces and 242 pounds. 1915 and 1916 I have not got, except the importation in 1915 was 675 pounds—in 1916. That was after the war, we had trouble getting it.

MR. KRESEL: I do not want to interrupt Colonel Anderson's examination of this witness any more than I have to. It is understood, as I gather, that this testimony which refers to the period prior to April 10, 1919, is taken subject to our objection that it is immaterial, irrelevant, and not binding upon this defendant.

THE COURT: That is correct, Mr. Kresel.

Q. 113. Mr. Metz, what is salvarsan generally used for?

A. It is used almost entirely in the treatment of syphilis.

Q. 114. Neosalvarsan the same?

A. The same.

Q. 115. What is the general use of novocaine?

A. Novocaine is a local anaesthetic used largely by dentists and physicians in surgical operations.

Q. 116. After the beginning of the great war in 1914 were salvarsan and neosalvarsan manufactured in the United Etates?

A. In 1916, I think it was, a concern in Philadelphia started putting out a product that answered the requirements, and which I sold for them—or rather, I obtained it from them and sold it to the trade under an agreement with them.

MR. KRESEL: May that be stricken out, your Honor. It is volunteered and it is not responsive to the question.

MR. ANDERSON: No objection, sir.

THE COURT: Let the entire answer be stricken out from the record.

MR. ANDERSON: Read the question, please.

(Q. 116 repeated by the stenographer as above recorded.)

A. Yes.

Q. 117. Can you state approximately to what extent?

A. Enough to supply the demand; practically enough to supply the demand.

Q. 118. You stated in your answer to a former question that in 1917 you sold some of this product which you bought from a manufacturer in the United States at Philadelphia. Did you handle any of the United States product?

A. Yes, sir.

Q. 119. Could you state approximately how much of the stuff manufactured in the United States you sold?

A. Oh, several hundred thousand ampules, at least.

By MR. KRESEL:

Q. 120. When was this? In 1917?

A. This was—I will give you the exact date under the agreement under which I handled it, in just a moment.

By MR. ANDERSON:

Q. 121. If you can state approximately, I would rather you would state—

A. I just want to get the date, Colonel. This was in December, 1916, or last part of 1916.

Q. 122. And you sold this product during 1917 of the American manufacture?

A. Until I began to make my own, yes, sir.

MR. KRESEL: May the latter part of the answer be stricken out?

THE COURT: Let the answer be stricken out and the question repeated.

(Q. 122 repeated by the stenographer as above recorded.)

A. Yes.

Q. 123. Did you manufacture any of this stuff prior to the time of the licenses that you received here?

A. Yes.

Q. 123-A. During the year 1917?

A. Yes.

MR. KRESEL: May I suggest that you inquire which of the products he so manufactured?

Q. 124. I will ask, in reply to that question of counsel.

A. Salvarsan and novocaine.

Q. 125. How did you import salvarsan during the years 1915 and 1916, with the blockade existing?

A. The blockade went into effect April 1, 1915. Prior to that time it came in regular shipments. After that I had to get permits from the British Government through the State Department to allow me to pass the blockade.

Q. 126. When you got those products in the United States, what did you do with them?

A. Sold them to the—

MR. KRESEL: One minute, please. I have no objection—he sold them.

A. (continued) Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians.

Q. 127. I believe you said that the sale of salvarsan and neosalvarsan in this country began about 1911 to 1912. Did I understand you correctly?

A. Yes, sir.

Q. 128. Mr. Metz, since the beginning of the sale of this product of salvarsan and neosalvarsan, and novocaine, too, have you been familiar with the market conditions and prices of these goods in the American market?

A. Yes, sir.

Q. 129. Does your business in the handling of these three articles which you have described, first, as importer, and second, as licensee and manufacturer, extend throughout the United States, or is it local?

A. I beg your pardon?

Q. 130. Does it extend throughout the United States, or is it local?

A. The sale?

Q. 131. Yes.

A. Throughout the United States and export—I exported to Germany within the last month or two 150,000 ampules.

MR. KRESEL: I ask that that part be stricken out.

THE COURT: Let the entire answer be stricken out and the question repeated.

(Q. 129 repeated by stenographer as above recorded.)

A. Throughout the United States.

Q. 132. Do you export any of the three articles named, since you became a manufacturer under license?

A. I have exported neosalvarsan to various countries.

Q. 133. Neosalvarsan?

A. Yes, sir.

Q. 134. You have not exported salvarsan or novocain?

A. Not recently. I have exported it, but not recently.

Q. 135. Approximately what quantity of salvarsan and neosalvarsan has your corporation sold under the licenses issued by the Federal Trade Commission, by years if you can state it?

A. Well, I can give the amounts to you, but the dollars and cents I gave you.

Q. 136. I meant the amounts.

A. I should say approximately a million ampules a year.

Q. 137. Do you mean salvarsan and neosalvarsan?

A. Yes, combined; both of them combined.

Q. 138. Can you say approximately how much of novocaine you sold?

A. I have not those figures exactly on novocaine. I have the amounts, but not the pounds.

Q. 139. The amounts, I mean, as licensee of the Federal Trade Commission.

A. From 1919 on I can give you the amounts on novocaine.

Q. 140. All right.

A. In 1919 the sales were $246,295.67, in 1920 $292,739.47, in 1921 $294,304.46, and in 1922 $302,283.40. Those were the gross sales.

Q. 141. But you cannot tell the exact amount sold, I mean, by quantity?

A. I have got them in the records, of course.

Q. 142. The quantities?

A. I have not them here.

Q. 143. If you cannot tell we will pass on.

A. I can get them for you. I have not my hands on that now.

Q. 144. I understood you to say that during the period that you have been licensed there were three other licensees for these same products?

A. On novocaine, yes.

Q. 145. And salvarsan and neosalvarsan?

A. There were three by the Federal Trade Commission and some afterwards by The Chemical Foundation.

Q. 146. Do you know what your profits were from the sale of salvarsan and neosalvarsan and novocaine during the period of the licenses by the Federal Trade Commission that you have described?

A. I have given you the salvarsan and neosalvarsan; I can give you the novocaine also.

Q. 147. You do know those amounts?

A. Yes.

Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of Patent No. 986,148, which you have described as covering salvarsan, and reissue Patent No. 13,848, which you have described as covering neosalvarsan, on April 10, 1919?

MR. KRESEL: Before the witness is permitted to answer the question, we object to the question upon the ground that the witness has not been qualified as an expert on the value of patents or of these particular patents; that no sufficient foundation for such a question as is now propounded to the witness has been laid; that there is no evidence that this witness has given or intimated which would lay a proper basis for any estimate of value of these patents to be given by hm. We object to it upon the ground that it is immaterial and irrelevant. We object to it upon the ground that we originally urged that this evidence is an attempt to get the Court to substitute its judgment for that of the action of the Executive in a discretionary matter that was given to the Executive by Congress. Upon all those grounds, we object to the question.

THE COURT: The answer may be received subject to the objections, under our general rule.

A. Repeat the question, please.

(Q. 148 repeated as recorded above.)

A. It is hard to tell the value. I should have been very glad to pay a million dollars for the patents as they stood then.

MR. KRESEL: I ask that the answer be stricken out.

Q. 149. The question calls for your opinion of the fair value at that time.

MR. KRESEL: I suggest that the witness be first asked whether he can give an opinion.

Q. 150. Very good. I will ask you if you feel that you can give an opinion as to the fair value of those patents I have described at that time?

A. Yes, based on my knowledge of the profits of the business.

MR. KRESEL: I ask that everything but the word "yes" be stricken out.

MR. ANDERSON: All right, I do not object, sir.

Q. 151. Since you have said that you can give an opinion and have testified as to your experience, you need not review that, but I only want to ask you what in your opinion would have been the fair value of these two patents on April 10, 1919, under the conditions you have outlined in your testimony?

MR. KRESEL: I object to the testimony if it calls for what would have been the fair value. The question should be, what was the fair value.

THE COURT: Your general objection is withdrawn to this question?

MR. KRESEL: Oh, no, your Honor. I urge all my objections, but I simply urge that to the form of the question.

Q. 152. Well, what was the fair value? I will correct my English.

A. At least a million dollars.

Q. 153. At least a million dollars?

A. Easily.

Q. 154. If these two patents had been put up for auction with the licenses outstanding which you have described, as shown here by the record, would you have bid as much as a million dollars for them?

MR. KRESEL: I object to the question upon the ground that it is hypothetical and upon the other grounds that we urged to the preceding question as to value.

THE COURT: I do not understand, Colonel Anderson, that this question can be disproved. You are really calling for the witness's present mental attitude with respect to a transaction four years ago. I do not see how that can possibly add anything to what you already have.

MR. ANDERSON: I should have said, "Would you then have bid." That would be a fact of a desire at that time and a willingness to pay. In asking that question, if your Honor please, I am proceeding on a line of examination which has been admitted in many cases where questions of property values of real estate in condemnation and things of that kind have arisen.

THE COURT: I will permit you to take the answer.

MR. ANDERSON: There may be a debatable question as to whether that adds anything to what has been said, but I would like to get it on the record.

Q. 155. If these two patents had been put up for sale at public auction, subject to the licenses which you have indicated, would you then have bid on the same and would you have been willing to bid?

MR. KRESEL: The same objections, your Honor, that I urged to the other questions.

A. I would have bid at least a million dollars and possibly more if I had the chance.

Q. 156. Now I will ask you with regard to novo-

caine, Patent No. 812,564. Basing your opinion upon the general facts outlined in the preceding questions, in which your opinion was asked, and not repeating it, and your knowledge upon this subject of market conditions, what in your opinion was the fair value of Patent No. 812,554 on April 10, 1919, if sold under the conditions outlined in your testimony, or subject to the conditions outlined in your testimony?

MR. KRESEL: I do not understand that, Colonel.

Q. 156. (Continuing) All right. If sold subject to the licenses which you have described.

MR. KRESEL: That is different. We object to the question upon the grounds that we urged to the preceding question as to the value of the salvarsan patent.

THE COURT: Same ruling.

A. At least $200,000.

Q. 157. If the novocaine patent No. 812,554 had been offered at public auction by the Alien Property Custodian subject to the licenses which you have indicated then existed, as issued by the Federal Trade Commission, would you have bid for the same; and if so, how much would you have bid as a minimum?

MR. KRESEL: Same objection, your Honor.

MR. ANDERSON: That is understood.

A. At least $200,000.

Q. 158. Have you or the corporations which you have mentioned, with which you are connected, or which you control, ever registered any trade-marks covering salvarsan, neosalvarsan or novocaine?

A. Yes, sir. I had the trade-mark registered; transferred and registered.

Q. 159. Have you certified copies of those trade-marks or copies of them in this courtroom?

A. They are here.

MR. ANDERSON: I now offer in evidence the

following documents to be read and identified by the following numbers:

A certified copy of an instrument, trade-mark No. 53,072, called "Novocaine," dated May 22, 1906, to be read as "Plaintiff's Exhibit 403." Do you want to see those, Mr. Kresel?

MR. KRESEL: I would like to see them. If you are going to offer them one by one, I want to register my objection to them. I understood you were going to offer them all together and I was waiting until you were through. May I see them, please? (Papers handed to counsel).

Colonel, my recollection of the question to the witness which brought forward these papers was whether he or his concerns had registered these. This paper that you hand me appears to have been registered in the name of a German concern.

MR. ANDERSON: But I am going to offer the assignment. I will follow that with the assignment in each case.

MR. KRESEL: You now offer this paper.

MR. ANDERSON: I offer that.

MR. KRESEL: We object to it upon the ground that it is immaterial and irrelevant.

THE COURT: You may put it of record under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 403." (*See Exhibits, Vol. II, Page 741.*)

MR. KRESEL: What was the date of that, Colonel?

MR. ANDERSON: 8th day of January, 1915. Right under that same offer, Assignment from the German Farbwerke, whose name appears as the original Registrar of the Trade-mark, to Farbwerke-Hoechst Company, dated the 8th day of

January, 1915, and shown by the certificate of the Patent Office to have been recorded on February 26, 1917, in the record as therein stated, to be identified and read as "Plaintiff's Exhibit 403-A."

THE COURT: Admitted under our general rule, subject to the general and specific objections.

Received in evidence and marked "Plaintiff's Exhibit No. 403-A." (*See Exhibits, Vol. II, page 745.*)

MR. ANDERSON: Patent Office copy of Trade-mark 79,969, registered October 25th, 1910, called "Salvarsan," identified and read as "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

THE COURT: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

MR. ANDERSON: Instrument called "Assignment of Trade-mark, No. 79,969," dated the 5th day of March, 1914, recorded May 6th, 1914, as stated in the certificate of the Patent Office, to be identified and read as "Plaintiff's Exhibit No. 404-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit 404-A." (*See Exhibits, Vol. II, page 750.*)

MR. ANDERSON: Trade-mark issued by the United States Patent Office, No. 88,862, registered October 29th, 1912, the name being "neosalvarsan," to be identified and read in evidence as "Plaintiff's Exhibit No. 405."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405." (*See Exhibits, Vol. II, page 755.*)

MR. ANDERSON: An instrument called "As-

signment of Trademark No. 88,862, dated October 25, 1912," which instrument of assignment is dated the 5th day of March, 1914, and recorded in the Patent Office May 6, 1914, as shown by certificate thereto annexed to be identified and read in evidence as "Plaintiff's Exhibit No. 405-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405-A." (*See Exhibits, Vol. II, page 737.*)

Q. 160. Colonel Metz, have you sold and distributed any products under the names indicated in the trade-marks which I have just introduced in evidence since the assignment to you on the dates named in said assignments?

A. Yes, sir.

Q. 161. Have those trade names or trade-marks and each of them been in constant use by you?

A. Yes, sir.

Q. 162. Could you state of your own knowledge what you have expended in advertising these three trade-marks and each of them in the United States since they were assigned to you?

MR. KRESEL: Can you separate them?

Q. 162. (Continued) Yes, can you separate them?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant; that it is no basis for arriving at any value of the trade-marks; furthermore upon the ground that it has not been made to appear, and I do not understand that it is charged, that these trade-marks were either seized by the Custodian or conveyed to the Chemical Foundation; is it?

MR. ANDERSON: I think they are included; yes.

MR. KRESEL: Is it? I did not know that that was your charge.

MR. ANDERSON: That is in the list in Exhibit G.

MR. KRESEL: I did not understand that that was your charge. I withdraw the last ground, then, if that is the fact.

THE COURT: I am confused about that, Colonel Anderson. These assignments were made of the three products?

MR. ANDERSON: Yes, sir.

THE COURT: I mean assignments of the trademarks of each of the three products were made to some corporation in which Mr. Metz was interested.

MR. ANDERSON: Yes.

THE COURT: And they were made after the war began?

MR. ANDERSON: Before the war, that is before we went into the war.

THE COURT: After the conflict abroad began, but before we entered?

MR. ANDERSON: Yes, sir.

THE WITNESS: Prior to the conflict abroad.

MR. ANDERSON: One moment.

THE WITNESS: I beg pardon.

MR. ANDERSON: I understand that the assignments were made prior to the beginning of the war; at least the dates are stated on the face of the assignments.

THE COURT: Do these assignments appear to be absolute on their face?

MR. ANDERSON: Yes, sir. They are in evidence.

THE COURT: And you have shown by the exhibits attached to your Bill, which have been introduced in evidence, that these three trademarks were seized and sold by the Alien Property Custodian?

MR. ANDERSON: Yes, sir. The Bill in this case, if your Honor please, Exhibit G and the various schedules—just exactly which this is I do not recall, but that shows that these three trademarks were seized by the Alien Property Custodian and two days after seizure were transferred to the Chemical Foundation, that so far as the record of the Alien Property Custodian shows or we know, they were still held by or claimed by the Chemical Foundation. I am going to bring that out later. I wanted first to get this evidence in if it were appropriate, but I am perfectly willing to lay the foundation by bringing that out later.

THE COURT: I will take the answer.

MR. ANDERSON: The question was how much he had expended in advertising these trade-marks.

THE COURT: I thought it was the value. You may take that answer, but I think I have indicated before how I feel, as to what weight there may be to it. I will take the answer.

MR. ANDERSON: Yes, sir, I quite agree it is debatable.

Q. 163. That was for all these three trademarks together?

A. Approximately it was between $150,000 and $200,000 a year.

A. Practically, yes. I should say for the three. More than that probably, but at least that.

Q. 164. I will ask you to base your answer to the question I am now going to put on the general facts which I outlined in preceding questions when I asked your opinion as to the values of the patents, and say whether you can give an opinion as to the value of each of these three trademarks on April 10, 1919?

THE COURT: The answer to that is yes or no, whether you can.

A. I can; yes, sir.

Q. 165. Will you state in your opinion, basing it on the evidence you have given of your knowledge, etc., what was the fair value at that time of the two trade-marks salvarsan and neosolvarsan, which I understood you to say were used together; or, if you can give them separately, all right.

MR. KRESEL: The same objection, your Honor.

THE COURT: I understand that the objection goes to all this testimony.

MR. ANDERSON: Yes.

A. Well, do you mean for some one to acquire them or what they are worth to me?

Q. 166. I mean what would be the fair value if they were put up at auction and sold?

A. Oh, a million dollars easily.

Q. 167. Do you mean for both of them or one?

A. I mean for the two.

Q. 168. The two together?

A. The two together.

Q. 169. Could you separate their value, approximately.

A. Yes, I should say 75 per cent. and 25 per cent.

Q. 170. For what?

A. 75 for the neosalvarsan and 25 for the salvarsan. That is based on the proportion of sales, of course.

Q. 171. Then approximately you would put the fair value of the trade-mark neosalvarsan on April 10, 1919, at not less than $750,000?

A. Easily.

Q. 172. And of salvarsan at not less than $250,000?

A. Yes.

Q. 173. Take novocaine, and say what in your opinion was the fair value of that trade-mark in April 1919, if it had been put up and sold to the trade?

A. At least $250,000.

Q. 174. Was any demand ever made upon you by the Alien Property Custodian for the three trademarks salvarsan, neosalvarsan and novocaine, which you have described, either or any of them?

MR. KRESEL: Objected to as immaterial and irrelevant.

MR. ANDERSON: This goes to the inquiry as to seizure and sale.

MR. KRESEL: But it does not make any difference. If he had a right to seize he did not have to ask his permission.

MR. ANDERSON: I asked if any demand was ever served on him.

A. I think so, along with all other trademarks. The Companies had been seized in whose name they stood.

MR. KRESEL: I ask that everything except "I think so" be stricken out.

THE COURT: Let the whole answer be stricken out and the question repeated. The answer will be taken, Mr. Kresel, under the general rule.

MR. KRESEL: Yes, your Honor.

THE COURT: Read the question.

Q. 175. (Q. 174 repeated as recorded above).

A. I think there was.

Q. 176. Are you the Metz who was a party to the suit of Metz against Garvan, which I think was decided about June 2nd, 1922?

MR. KRESEL: One minute, please. I object to that on the ground that it is immaterial, and I would like to ask Colonel Anderson in what respect he considers that to be material.

MR. ANDERSON: I consider it material as showing the course of conduct of the Alien Property Custodian and the Chemical Foundation in dealing with these properties of this gentleman,

who was an American citizen, and his companies which were American companies. Also as going directly to the question of the seizure and sale of these particular properties, the value of which he has discussed.

MR. KRESEL: Colonel Anderson knows perfectly well that the suit he is now inquiring about had nothing to do with the Chemical Foundation and had absolutely nothing to do with the patents or trade-marks here in question. Knowing that, I think Colonel Anderson has not stated in answer to my inquiry what the real purpose of this question is.

MR. ANDERSON: Just hold on a minute and let us get ourselves straight on that proposition. Mr. Kresel may have omniscience, but he can not tell what I know and what I don't know. I do not know what the suit of Metz against Garvan referred to.

MR. KRESEL: You do not?

MR. ANDERSON: I do not, but I do know that there was such a suit and I wanted to identify him as the Metz therein referred to. That is all that I was going to ask about it.

THE COURT: Then I shall sustain the objection and not let you take the answer.

MR. ANDERSON: I want to make a further statement, if your Honor please.

THE COURT: Yes?

MR. ANDERSON: Mr. Kresel by the latter part of his statement implies that I have not been frank with the Court.

MR. KRESEL: No.

THE COURT: No, we are not going to discuss that.

MR. KRESEL: No, I did not mean that, and if you gathered that meaning I withdraw it.

MR. ANDERSON: I want to make that absolutely clear, that offer, because I want to be frank with the Court and counsel.

MR. KRESEL: I had no such intention.

THE COURT: We shall not now discuss it. I shall not assume any such implication resides in any remark of counsel on either side, particularly in view of the manner in which this case has been conducted during the last three weeks. So we will not have any discussion of that kind now.

MR. ANDERSON: That is all right, sir, I just wanted to make that clear.

THE COURT: The question is what?

MR. ANDERSON: I will withdraw the question in view of the statement of counsel that it refers to an entirely outside matter. I have not been able to look at the report; I did not have it. I know it refers to a suit.

THE COURT: Then you will put another question.

MR. ANDERSON: Yes.

Q. 177. Colonel Metz, are you a member of the American Dyes Institute?

A. My company was.

Q. 178. Which company?

A. The Consolidated Color & Chemical Company.

Q. 179. Any other company of yours?

A. I do not recall whether the Central was or not. I know the Consolidated was; and I attended meetings there, as President of that Company.

Q. 180. Are you or any of your corporations stockholders in the Chemical Foundation?

A. Yes, sir, three of them.

Q. 181. Which companies?

A. The Consolidated Color & Chemical Company, the Central Dyestuffs Chemical, and H. A. Metz Laboratories, Inc., subscribed for $50,000 of the stock

at the meeting at which subscriptions were taken for these companies.

Q. 182. Your companies still hold that stock, do they?

A. Yes, sir.

Q. 183. Now, I will ask you if you had any correspondence with the Alien Property Custodian or with the Chemical Foundation, or both, in relation to the seizure and sale of the three patents which have been here under discussion and the trade-marks which have been here under discussion, or any of them?

A. My counsel had with regard to the trade-marks.

Q. 184. Have you personally had any correspondence?

A. My counsel for me, as to their return.

Q. 185. Have you that correspondence in your possession?

A. Copies are here.

MR. ANDERSON: I would like to look at it. (Handed to counsel).

Q. 186. The plaintiff here introduced in evidence yesterday, three bills of complaint, identified as Plaintiff's Exhibits Nos. 345, 346, and 347, being in each case suits in equity, filed in the United States District Court for the Southern District of New York, by the Chemical Foundation, Inc., against H. A. Metz Laboratories, Inc., a corporation, and Frank White, as Treasurer of the United States. Do you know whether the H. A. Metz Laboratories, Inc. is the company which you have described, of which you are the head and owner?

A. Yes, sir.

Q. 187. If so, state whether that is the case.

A. It is.

Q. 188. There also were introduced yesterday, bills of complaint in three suits which were instituted

in the Eastern District of New York by the Chemical Foundation, Inc., against H. A. Metz Laboratories, and Frank White, Treasurer of the United States, identified as Plaintiff's Exhibits Nos. 363, 364 and 365. Is the H. A. Metz Laboratories, Inc., the company to which you have referred, of which you are the head?

A. I assume so; one of them.

Q. 189. You know that those suits have been brought against you?

A. I have been so informed by my counsel, yes, sir. I was in Europe when they were first brought. I was so advised.

MR. ANDERSON: With the reservation stated, the witness may be cross-examined, sir.

MR. KRESEL: Just one minute.

THE COURT: Suppose we take the morning recess which we spoke of.

(After short recess.)

Q. 190. Colonel Metz, you are here testifying under subpoena issued by this court, are you not?

A. Yes, sir.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 191. Mr. Metz, I have noticed that throughout your testimony this morning you never once mentioned the fact that prior to the outbreak of the European War you were the representative of the German House of Hoechst. That is the fact, isn't it?

A. Not in that way. I was the agent for the sale of their goods; bought on my own account from them.

XQ. 192. I say, the fact that you were their agent or representative or had anything to do with them at all was not mentioned by you upon your direct examination?

A. It was not asked in the question.

XQ. 193. There is nothing in that relationship that you desire to disclose, is there?

A. On the contrary, I would be very glad of it.

XQ. 194. The fact is that for many years before the outbreak of the European War you had relationships with the Hoechst Company of Germany?

A. Yes, sir; for 30 years at least.

XQ. 195. And for many years before the outbreak of the European War you had the exclusive agency in the United States for the sale and disposition of products manufactured by the Hoechst Company?

A. Yes, sir.

XQ. 196. Such arrangements as there were between you and the Hoechst Company were in writing, weren't they?

A. Yes, sir.

XQ. 197. Have you those contracts with you?

A. I have, and they were all published in the hearings referred to by Mr. Anderson.

XQ. 198. Now, if you will just answer my questions, Colonel, we will get along very well.

A. I have them, Mr. Kresel.

XQ. 199. Please do not volunteer anything that is not asked.

MR. ANDERSON: If your Honor please, to save interruption as far as I can, I wish to state on the record now that I object to any evidence in the cross-examination outside of matters covered by the direct; and that counsel makes the witness his own if he does it. I am not objecting to this examination because I think it relates to the general subject.

THE COURT: It would be well for you to call my attention specifically to any questions that you think are not in cross-examination.

MR. ANDERSON: I will, sir.

THE COURT: Because it is not my purpose to let the cross-examination go beyond the proper bounds of cross-examination.

MR. ANDERSON: I will endeavor to do so, but I did not want to interrupt counsel.

XQ. 200. You say that you have your contracts with the Farbwerke Hoechst Company of Germany here. Will you please produce them?

A. They are in my bag there. I will have them in a moment, Mr. Kresel. Here are copies of them—and the originals, I think.

XQ. 201. The last contract between you and the Hoechst Company was dated in 1912, was it not?

A. The last was in 1913.

XQ. 202. Let me see that one first, please, if you will.

A. There was one in 1912 and one in 1913. I have the 1912 one here, but not the 1913. It is in the record. I can point it out to you in the record, where Mr. Garvan put it in. I have the other ones from 1902, 1905 and 1912.

XQ. 203. Let me have what you can produce.

A. The 1913 one is the last one. That is in the record.

MR. KRESEL: All I ask is that these be marked for identification.

THE COURT: Let them so be marked.

MR. KRESEL: The first one I ask be marked as an agreement dated the 12th day of November, 1902, between Farbwerke vorm. Meister Lucius & Bruening, Herman A. Metz and others.

Marked Defendant's Exhibit C for identification 6-23-23.

THE WITNESS: Those are prior to 1913, are they not, Mr. Kresel?

MR. KRESEL: The next one is an agreement dated August 4th, 1915, between the same parties.

Marked "Defendant's Exhibit D for Identification."

MR. KRESEL: The next is an agreement dated the 26th day of September, 1904, which is described as a Supplemental Agreement, made between the same parties.

Marked "Defendant's Exhibit E for Identification."

MR. KRESEL: The next is an agreement dated July 22nd, 1912, between the same parties.

Marked "Defendant's Exhibit F for Identification."

MR. ANDERSON: It is not your intention to introduce those at the present time?

MR. KRESEL: Not at the present time.

THE WITNESS: The 1913, may I put that one in? It is not fair to put in the others without the 1913 contract, which is the one on which the whole thing hinges.

MR. KRESEL: I would ask your Honor to instruct the witness that it is his duty to answer questions and not argue with me, or to suggest that anything that counsel does is either fair or unfair.

THE COURT: What was the statement made by the witness? Will you read that, please? (Record repeated).

Colonel Anderson, do you care to do what has been requested of the Court? I should be very glad to have it come from you rather than from me.

MR. ANDERSON: I will, if your Honor prefers. I think very often witnesses who are not familiar with Court proceedings do not realize that they

must confine themselves strictly to response to the question.

THE COURT: Colonel Anderson, I shall be very glad to have you inform this witness as to what a witness's functions are.

MR. ANDERSON: I will. Colonel, in answering Mr. Kresel's questions under cross-examination, the rules of evidence require that you should confine your answers to what is fairly responsive to the question, and not go beyond his question. If there are any matters that are not brought out by that answer, my duty is to bring them out, if they are material, on Re-direct.

THE WITNESS: Yes, sir.

MR. ANDERSON: And in the next place, I would suggest that you have the right to make a complete answer to the question; that is an answer, if "yes" or "no" would not be true, you have a right to make a sufficient answer to make your reply the truth and the whole truth, but, of course, not to argue with counsel or to go beyond a fair, truthful statement in reply to his question. I think that covers it.

THE COURT: With this modification, Colonel Anderson: That if a question is asked him which calls for a yes or no answer, he must first answer "yes" or "no," and then qualify it and not attempt to reason it out, without the yes or no answer.

MR. ANDERSON: I am glad your Honor made that suggestion. First answer "yes" or "no," and then explain or qualify as may be necessary, and only to the extent necessary to make your answer a truthful response to the question.

XQ. 204. Now, one of the products of the Farbwerke Company of Germany was salvarsan?

A. Yes, sir.

XQ. 205. At first there was only salvarsan and later they put out the product called Neo salvarsan?

A. Yes, sir.

XQ. 206. And subsequent thereto a third product called Silver Salvarsan?

A. Yes, sir.

XQ. 207. And up to the outbreak of the European War, you were the sole selling agent in the United States for those products?

A. Yes, sir.

XQ. 208. And except through you, no one in the United States could obtain those products?

A. They did.

XQ. 209. Except you, there was no one that sold those products for the Farbwerke Hoechst Company?

A. Not directly for them.

XQ. 210. You have stated in your direct examination that salvarsan is a drug, I think you said, was a specific for syphilis; indeed it is the most effective for that disease?

A. So held.

XQ. 211. And you were marketing that product and its subsequent development from the time when the formula for its production was first discovered, were you not?

A. From the time it first came on this market.

XQ. 212. And that, you say, was in 1911?

A. 1911 or 1912.

XQ. 213. Up to the time of the outbreak of the European War, was that product manufactured here in the United States?

A. No, sir.

XQ. 213-A. When was it first produced here in the United States by anybody, to your knowledge?

A. Early in 1916, I think. 1915, or early in 1916.

XQ. 214. Now, it is that product—salvarsan,

that is covered by one of the patents as to which you undertook to give an opinion as to value?

A. Salvarsan was the trade-mark name which I had.

XQ. 215. I did not ask you about the trade-mark. I am speaking now about the patent. Salvarsan, Neo Salvarsan and Silver Salvarsan were all covered by the patent as to which you undertook to give value this morning?

A. No, sir.

XQ. 216. Which one was?

A. Salvarsan and Neo Salvarsan. Silver came later, after the War, after the Armistice.

XQ. 217. You have sold Silver Salvarsan?

A. Under license from The Chemical Foundation.

XQ. 218. You have given us the figures of the amount of your sales, have you not?

A. Not of silver salvarsan, no, sir. Only salvarsan and neo salvarsan.

XQ. 219. You did not include your sales of silver salvarsan?

A. No. They are separate.

XQ. 220. Nor include your profits in silver salvarsan?

A. No, sir.

XQ. 221. So you have given us today no figures as to silver salvarsan?

A. No, sir.

XQ. 222. Now, salvarsan and neo salvarsan were covered by the patents as to which you undertook to give value this morning?

A. Yes, sir.

XQ. 223. And those patents were owned prior to the outbreak of the European war by whom?

A. Farbwerke Vorm. Meister Lucius & Bruening of Hochst-on-the-Main, Germany.

XQ. 224. And that was the concern whose exclusive agent you were in the United States?

A. Yes, sir.

XQ. 225. Besides pharmaceuticals, this Farbwerke German concern also manufactured dyestuffs?

A. Yes, sir.

XQ. 226. And prior to the outbreak of the European war, you were their exclusive selling agent in the United States for those products?

A. Yes, sir. My company was; one of my companies.

XQ. 227. And those products were covered by patents owned by the German concern, weren't they?

A. Some of them were patented; others were not.

XQ. 228. Were any of the products covered by patents owned by the Farbwerke Company of Germany manufactured in the United States prior to the outbreak of the European war?

A. Not to my knowledge.

XQ. 229. Your relationship to the Farbwerke Company of Germany was extremely close, wasn't it?

A. Yes, sir.

XQ. 230. Indeed, it is a relationship that has existed, as you say, for a period of thirty years?

A. Yes, sir.

XQ. 231. Practically all your business life has been in co-operation and in conjunction with the Germans, has it not?

A. The Germans, the English, French and Swiss manufacturers.

XQ. 232. Mostly with the Germans?

A. Mostly with the Germans; with this one particular German house.

XQ. 233. What years did you say you were in Congress?

A. I was elected in 1912; went there in 1913; 1913, 1914, 1915. March 4, 1915, I think my term expired.

XQ. 234. The question of duties on importations of dyestuffs and pharmaceuticals was one in which you were interested as representative of this German concern, were you not?

A. Yes, sir, as an importer and as a dealer here.

XQ. 235. In both capacities?

A. Yes, sir.

XQ. 236. And, of course, the Farbwerke-Hoechst Company of Germany was interested in what duties were imposed by our Government upon importations of their products?

A. Yes, sir.

MR. ANDERSON: If your Honor please, I wish to make my objection to this matter on the ground that it is not proper cross-examination, entirely outside of the direct, relating to matters not touched upon in direct. I object upon that ground.

MR. KRESEL: I say to your Honor that it is strictly cross-examination for the purpose of showing the interest and the bias of this witness, as I shall show by my further questions.

THE COURT: To show his interest in the transactions to which he has testified?

MR. KRESEL: Yes, your Honor; and affecting his credibility.

THE COURT: That objection, as not being proper cross-examination, will be overruled, if that is the purpose, because I think a very wide scope is given on cross-examination.

MR. ANDERSON: I recognize that, sir, but I thought counsel was going into the question of import duties.

THE COURT: I think this is within the proper bounds of cross-examination and I will overrule the objection.

XQ. 237. While you were in Congress, did you receive instructions from the Farbwerke Company in

Germany as to what you should do with reference to duties to be placed upon products that they were manufacturing and importing into the United States?

A. No, sir. Emphatically not. Suggestions, but not instructions.

XQ. 238. Oh, you got suggestions?

A. Suggestions. Any manufacturer makes suggestions, naturally.

XQ. 239. There were suggestions made to you, who were then a member of Congress, as to what you should do with reference to import duties on products manufactured by the Hoechst Company?

A. No, sir; not as to what I should do for a moment; what they would like to have done.

XQ. 240. What they would like to have done?

A. Possibly. They expressed their opinion. That is all. It did not affect me any.

XQ. 241. Now, I read to you the following letter.

MR. KRESEL: Colonel, I am reading from page 499 of the proceedings before the Committee on Finance in the United States Senate, from which you read this morning.

XQ. 241 (continuing). Did you receive the following letter from the Farbwerke Company in Germany:

"Hoechst A. Main, June 20, 1913.

"My dear Mr. Metz:

"I received your two letters of the 4th and 10th of this month.

"As regards hydrosulfit, I can only explain to you once more that we invoice exactly according to the lowest market prices here, that we naturally deduct packing and freight from the duty invoice." * * * *

"It is very interesting, that you now receive the samples of the competing factories on the part of the dyers for examination. I can nevertheless imagine that an uncomfortable situation may some time arise for you because of it."

I will return to that paragraph in a minute. This is the paragraph that I have reference to:

> "We are naturally not interested that hydroblue or carbazol colors should be placed on the free list; would not, however, on our part come forth directly against Cassella; you will therefore on your part omit any direct work against Cassella. I also repeat, as I have already informed you in my communication of June 9, my opinion, that the best for all of us would be, if certain dyestuffs, including the alizarin dyes, would pay about 15 per cent duty, and only indigo remains on the free list. I should consider it a great success were you successful in leading up to such a change in the tariff."

Did you receive that letter?

A. Yes, sir, I did.

XQ. 242. This letter is dated June 20th, 1913?

A. Yes, sir.

XQ. 243. At that time you were a member of Congress?

A. Yes, sir.

XQ. 244. Now I want to call your attention to another letter and ask you whether you received that one, from the Farbwerke Company in Germany. This one is dated May 14th, 1913. I am not going to read the whole letter, I am going to read only that portion of it which refers to the question I have directed to you.

MR. ANDERSON: What is the page?

MR. KRESEL: Page 500.

MR. ANDERSON: Of what volume?

MR. KRESEL: Of the same publication.

XQ. 244 (continuing). "The Badische"—that refers to the Badische Aniline Company, does it not?

A. Yes, competitors of the concern I represented.

MR. KRESEL: I ask that the latter part be stricken out.

THE COURT: It is stricken out.

XQ. 244 (continuing).

"I can readily imagine that you are unusually busy in Washington now. The Congressional Record, which you were kind enough to send me, I will read with much interest. From it one can best picture the situation.

"The Badische is naturally not much pleased that alizarin has to pay a duty of 10 per cent, whereas the indanthrene and the remaining anthracene derivative must pay full duty. We trust, however, that you will be able to push through alizarins without any duty and have the duty on dyestuffs reduced. It would at any rate be very nice, though I can not really believe it possible, after we were so badly cut up by the revision of the tariff. I beg of you to forecast exactly the best results obtainable in delivering to your f. o. b. European ports."

Did you receive that letter?

A. I assume so. It is in the record.

XQ. 245. And at that time you were a member of Congress?

A. Yes, sir.

XQ. 246. Pursuant to the suggestions you say you got from these letters you did as a member of Congress undertake to put indigo on the free list, did you not?

A. Not pursuant to the suggestion in those letters; no, sir.

XQ. 247. I did not ask you that.

A. No, sir; I did not. That is the answer, then.

XQ. 248. Did you try as a member of Congress to have indigo placed on the free list?

A. Yes, sir.

XQ. 249. And you succeeded?

A. Yes, sir.

XQ. 250. Did you tell on the floor of the House

of Congress that you were representing a German concern that was writing to you and making suggestions to you as to what you should do?

A. I don't know whether I did or not. There was no occasion for discussing it.

XQ. 251. Before we entered the war, Mr. Metz, you were violently pro-German, were you not?

A. No, sir; at no stage was I pro-German.

XQ. 252. That is an answer.

MR. ANDERSON: I do not think that is a fair question, if your Honor please.

THE COURT: Absolutely no.

MR. ANDERSON: What is pro-German is absolutely a question of——

MR. KRESEL: I am going to follow it up, Colonel. The question is answered.

THE COURT: I take it, Colonel Anderson, that the attitude of a witness with respect to such matters is a fact that might be considered and would be proper to be considered in weighing the testimony of a witness, might it not?

MR. ANDERSON: I do not think, sir, that I could be questioned as to whether I was pro-German or pro-English. I could be questioned as to what I did and said, and from what I did and said——

THE COURT: I agree with you.

MR. KRESEL: I am coming to that. I am coming to the specific portions. Just give me a chance.

THE COURT: I think you are right on that, Colonel Anderson.

MR. ANDERSON: I move to strike out that question as an offensive question, and I think it ought to be stricken out.

MR. KRESEL: Oh, Mr. Metz does not consider it an offensive question.

THE WITNESS: I have heard it so often I do not like it, Mr. Kresel.

THE COURT: What is your application, Colonel Anderson?

MR. ANDERSON: My application is to strike out that question and any answer thereto, because I do not think it is a fair question in the first place; in the next place, it is asking the witness for an opinion on a matter. Counsel has a perfect right to examine him on anything he did or said and your Honor can draw the conclusion.

MR. KRESEL: I have a right, your Honor, to ask him on cross-examination any question that goes to his credibility and his interest, and I offer this testimony on that ground and for that purpose.

MR. ANDERSON: I concede that there can be broad examination going to credibility, but there is a limit even to evidence going to credibility, and that is admissible evidence of facts. The witness expressed the opinion and his answer is that he was not pro-German. Upon the facts your Honor might reach a different conclusion. The fact whether he was pro-German or pro-something else before the War, might be for you. In the second place, the matter is of no materiality here, and can not be, for the reason that the term has since the War acquired a significance which in friendliness between nations before the War it did not have, and therefore the use of that expression in the period before the War conveys an impression upon the record which was not and could not have been the fact prior to the War. Therefore, the witness can be asked as to what he did and what he said and your Honor can then draw your conclusion as to his attitude toward any question affecting this case.

THE COURT: The question has been answered, and I am not making any ruling. I will let the answer stand under the general rule with such exception as you desire.

MR. ANDERSON: Will your Honor permit me an exception to that ruling.

XQ. 253. In addition to being the exclusive selling agent of this German concern you had other interests here of a German character before the War, did you not?

A. I had some stock in the wireless—Sayville Wireless Company. I was President of that corporation; that was all.

XQ. 254. That is, you were President of the Atlantic Communication Company?

A. A short time, yes.

XQ. 255. Which was controlled by the Allgemeine Electricitats Gesellschaft of Berlin?

A. Yes, sir, the Telefunken Company.

XQ. 256. You were also part owner of the Evening Mail, were you not?

A. No, sir, I loaned some money——

XQ. 257. Did you have any interest in the Evening Mail?

A. Not until long after we were in the war.

XQ. 258. You knew Mr. Rumley, did you not?

A. Certainly.

XQ. 259. Didn't you own stock in the Evening Mail before we entered the war?

A. I do not think I did. I had some stock as collateral on some money I loaned Mr. Rumley.

XQ. 260. And that money was loaned by you to enable Mr. Rumley to buy the Evening Mail, was it not?

A. I so understood at the time, yes.

XQ. 261. And you did it at the request of Count von Bernstorff, the German Ambassador, did you not?

A. No, sir. I beg your pardon, I did not. It was after von Bernstorff went home, that I loaned him the money.

XQ. 262. I read to you from a letter that you wrote to J. A. Lyons, Esq., Room 746, Custom House, New York City. Do you remember writing to him?

A. Yes, sir.

XQ. 263. He was a Government agent that was investigating your connection with the Evening Mail, was he not?

A. I told him all I knew of it, yes, sir.

XQ. 264. I read the following passage:

> "My first acquaintance with Rumley came about through a telephone message from Count Bernstorff some time early in 1915 on my return from Europe."

That was true, was it not?

A. Yes, sir.

XQ. 265. So your first connection with Rumley was through Count von Bernstorff?

A. It was no connection. It was acquaintance.

XQ. 266. What?

A. Just an acquaintance with him; no connection.

XQ. 267. An acquaintance. And then you made this loan, as you call it?

A. Not until a long time afterwards.

XQ. 268. When did you make the loan?

A. I do not recall. Some time in 1917, I guess after the war started, I think I loaned Rumley some money.

XQ. 269. How much did you lend him?

A. I can not recall the figures. They are probably in there. I think it was—I do not remember. They were different amounts.

XQ. 270. What did you get for that loan?

A. I got his note and stock as collateral.

XQ. 271. Didn't you get a portion of the stock outright?

A. I do not think so. If I did, I did not want it. I do not remember the details.

XQ. 272. You do not remember that?

A. No, sir; simply a collateral proposition.

XQ. 273. I read again from this letter to Mr. Lyons: "According to my check book I gave Dr. Rumley a check on May 12, 1917, for $10,000, for which he gave me as collateral 250 shares of S. S. McClure newspaper stock, one-half of which was to belong to me and the other half he was to have the privilege of buying back."

A. I guess that is right.

XQ. 274. That refreshes your recollection?

A. Yes, after the war started.

XQ. 275. Besides your interest in the Atlantic Communication Company, and part owner of the Evening Mail, what other German interests did you have here?

A. None that I recall.

XQ. 276. Now, just think.

MR. ANDERSON: One moment. I object, if your Honor please. The witness has not stated that he was a part owner of the Evening Mail. He expressly said he was not a part owner of the Evening Mail.

MR. KRESEL: I will amend that, your Honor.

MR. ANDERSON: And if he is going to quote his testimony, I will ask him to quote it correctly.

MR. KRESEL: All right, I will correct that.

XQ. 276. Such interest as you had at all was——

A. Collateral interest.

XQ. 277. You did not misunderstand me?

A. I did.

XQ. 278. Oh, you did misunderstand me?

A. I knew what you were getting at.

XQ. 279. I am sorry.

A. I did not misunderstand you.

XQ. 280. You were part owner of the Atlantic Communication Company, were you not?

A. I had $10,000 worth of stock that I bought in that company.

XQ. 281. Well, you had connection with the Republic Trading Corporation, did you not?

A. That was a corporation——

XQ. 282. Didn't you, yes or no?

A. Yes.

XQ. 283. You were vice-president of that?

A. I do not recall that.

XQ. 284. You had some office?

A. Probably; they were all dyestuff people.

XQ. 285. And that corporation was organized to import German goods after the outbreak of the European War?

A. Yes, sir, German dyes.

XQ. 286. You were quite an intimate of Count von Bernstorff?

A. I don't think I was intimate.

XQ. 287. Well, you breakfasted with him?

A. So did others.

XQ. 288. Well, you breakfasted with him?

A. Certainly, I had a perfect right.

XQ. 289. That is all I wanted to know. You knew Dr. Albert, did you not?

A. Yes, naturally.

XQ. 290. Dr. Albert was a privy-counsellor of the German Empire?

A. I understood so.

XQ. 291. And you know that he was over here in the United States prior to our going into the war——

A. Handling commercial affairs.

XQ. 292. ——for two or three years?

A. Handling commercial affairs.

XQ. 293. You were very intimate with him?

A. Not intimate, no. I knew him and did business with him; had to.

XQ. 294. Conferred with him?

A. Had to, to get goods.

XQ. 295. You went abroad early in 1915, do you remember?

A. I went abroad late in 1914, at the request of the State Department.

MR. KRESEL: I ask that the latter part be stricken out.

THE COURT: Let the whole answer be stricken out and the question repeated.

XQ. 296. You went abroad the latter part of 1914 or the early part of 1915?

A. The latter part of 1914, and came back the same year, Christmas Day.

XQ. 297. And when you went abroad you carried a letter of introduction from Dr. Albert to the German officials?

A. Yes, sir.

XQ. 298. You went into Germany, did you not?

A. Yes, sir.

XQ. 299. I want to know whether this is the letter of introduction that you got from Dr. Albert? It is dated November 16, 1914.

MR. ANDERSON: Will you state what you are reading from, Mr. Kresel?

MR. KRESEL: Page 494 of the Hearings before the Committee on Finance of the United States Senate.

XQ. 299 (continuing).

"My dear Benefactors and Friends. Assembled in Hohen Hause, Wilhelmstrasse, 74:

"Perhaps by the time when you receive these lines Herr H. A. Metz, of New York, will call with a letter of introduction. I wish earnestly to re-

quest you to take good care of him and treat him very nicely. Maybe you will take him to breakfast some time or show him other favors after the American fashion, in the event that Excellenz Richter or Dr. Muller do not do it. I am afraid they will be too busy.

"At the same time I call your attention to something which you will have the kindness to bring before the proper authorities:

"In considering all the favors to which Herr Metz is entitled it must not be forgotten that he is a competitor of the other dye works. For that reason I have just cabled you that the bonds covering re-export of dyestuffs are to be deposited with me. Also in alloting ship space for return freight it must be remembered that the other chemical works are to have a word to say. I earnestly recommend that this exportation of dyestuffs be somewhat more favored than has heretofore been the case, perhaps through my own suggestion, as otherwise there is danger that America itself will take up the production. Plans are already being prepared for a high protective tariff, which will be taken up by the Congress which meets in December. As Metz is a Member of the Congress, he is the right man to fight this measure."

That is the letter of introduction?

A. No, sir; I did not carry that letter.

MR. ANDERSON: Then I move to strike the letter from the record. It is a communication from Dr. Albert to the German Government and Mr. Metz did not have it.

THE WITNESS: I never saw it.

MR. ANDERSON: And he says he has never seen it. Of course it goes out of the record, I assume.

MR. KRESEL: Just a minute, please. Not quite so fast about it going out of the record.

THE COURT: Just a moment, Mr. Kresel. It is embodied in a question and he denies having

had it. I do not see how I can strike his question out of the record.

MR. KRESEL: He said at first, your Honor——

THE COURT: You will pardon me a moment, Mr. Kresel. But it necessarily is without value, although I do not see how I can strike out the question.

MR. ANDERSON: May I suggest this. This letter is not addressed to the witness in any way. Therefore, while I did not wish to object to it not knowing what counsel's purpose was, I respectfully suggest that the question and any answer thereto be stricken from the record because it is a communication between a German who is claimed here to be an official of the German Government and his friends, whoever they may be, at some place in Wilhelmstrasse. The witness has never seen it and had nothing to do with it. I might have written a similar letter to the English Government.

THE COURT: I did not know that until after the witness answered.

MR. ANDERSON: Neither did I. Therefore I submit that the question should be stricken. He was asked whether he had this letter of introduction.

THE COURT: But Colonel Anderson, you are advancing a proposition that is entirely new to me and I will get you to give me your authorities. I do not know of any authority of a Court to strike out a question. If counsel have used the privilege of asking questions—and I assume no suggestion is thought of by you at this stage, in view of the general rule which we have laid down in this case—there is one method of redress. The Court has power under such circumstances to protect itself, but I do not understand in an equity case that

a question asked by counsel is ever stricken from the record, I have never known it, have you?

MR. ANDERSON: I have known it, sir, where the question itself undertook to put on the record matter which was absolutely immaterial and which is improper in the record. I have known of it being done, but of course those things are largely in the discretion of the Court.

THE COURT: I can not conceive of any possible harm that it can do you, that is, that the question can do you.

MR. ANDERSON: I might state, if your Honor please, that in the Appellate Court, if I may refer to the Appellate Court, when we come to the argument of this case on briefs, this record is going to be a good many thousand pages. That Court will never find time to examine this record carefully, never will read it, I assume, because I do not imagine they could ever take the time and do their other duties. Matters of this kind can be referred to and pointed out on the record, and unless elaborate briefs are filed calling attention to it—and even then it is very difficult—it is extremely prejudicial in a case of this kind to inject into the record matters which have absolutely nothing to do with the case and allow them to stay on the record.

I take it that the record in this case is absolutely under your Honor's control, subject of course, to the use of judicial discretion. This letter was never shown to this witness and he was not asked whether he ever saw it, but it was read on the record. Therefore, I respectfully suggest, and submit to your Honor's judgment of course, that it be stricken from the record, and that counsel be required—I do not use the word in an unpleasant sense, but I know he will—to ask his

questions without putting on the record matter of this kind without first finding out from the witness whether or not the witness has any knowledge of it, so that we can make our objection at the proper time.

THE COURT: I will be glad to hear you, Mr. Kresel.

MR. KRESEL: I have nothing to add, your Honor. I asked this witness whether he carried a letter of introduction from Dr. Albert. He said he did. Then I read him the letter and asked him whether that was the letter and he said "No." That is where the record stands.

MR. ANDERSON: I suggest that that letter should have been shown the witness and not read into the record. If it had nothing to do with the record, it should be stricken from the record.

THE COURT: Colonel Anderson, the best I can do to protect you, as I see it, without laying down one broad rule for you and a narrower rule for the defendant, is to state here that that letter as it now stands is wholly without value in this record. The method of identifying the letter was not challenged prior to its being read. What the ruling would have been then, I shall not attempt to say because that is a past event. But as it now stands, I do not see how I can strike it from the record, the method of identifying it not having been objected to at the time. You may have such exception as you desire.

MR. ANDERSON: I will ask leave to note an exception.

XQ. 300. Let me have the letter of introduction that Dr. Albert gave you?

A. I haven't got it. It was left over there in all probability, unless it is in the record here.

XQ. 301. You did go to Europe, and on the way over, did you go to England?

A. No, I went to Holland. I went via Holland.

XQ. 302. You did not go to England at all?

A. No, I took a Dutch steamer to Holland, to Rotterdam. I passed through Dover.

XQ. 303. You remember giving an interview to the Brooklyn Eagle May 6th?

A. I do not recall, unless I see it.

XQ. 304. Look at it and also at the same time look at this letter that you wrote to Dr. Albert sending him the clipping?

A. Yes, that is right, substantially correct, an interview such as reporters usually get.

XQ. 305. Of course.

A. Without a chance of looking it over. They put in what you say and what they think you ought to say.

MR. ANDERSON: Are you going to offer that in evidence?

MR. KRESEL: Just a minute.

XQ. 306. This letter is dated May 9, 1916, and speaks of the clipping as being from the Brooklyn Eagle of May 6, 1916.

A. Yes; before we entered the war.

MR. KRESEL: I did not even hear what he said, your Honor, but after the word "yes," I ask that it be stricken out.

THE COURT: Let it be stricken out.

XQ. 307. You were not neutral in the war, were you?

A. Yes, sir; I was neutral.

MR. ANDERSON: I object. This gentleman has testified that he was a citizen of the United States and born in the United States; and a citizen of the United States is a neutral. What might be his conclusions as to a mental attitude is not evidence in this case.

XQ. 308. Didn't you say that you were not neutral?

THE COURT: Just a minute, Mr. Kresel. This is cross-examination, Colonel Anderson. What is the test of neutrality?

MR. ANDERSON: The test of legal neutrality is the status in the country, by International Law.

THE COURT: What is the test of individual neutrality?

MR. ANDERSON: I have no idea, sir. I do not know of any such thing as individual neutrality. Neutrality is a status in International Law; and while we were enjoined to think neutrally, I suppose that would be the real test of personal neutrality. I am frank to say that I do not think that it is a test, that there are any such things as neutrals. Any man who has red blood in his veins is not a neutral on any subject. Therefore the sole meaning of a neutral in law is the status of a citizen of a country and that status is fixed by law and by the Government.

THE COURT: We are not concerned with that.

MR. ANDERSON: Certainly not. That being the case, it is perfectly competent, if it has any relevancy here—and I can not see any relevancy in any of this examination—but if it has any relevancy here, he can ask him what he did and what he said. But as to his mental attitude, whether he thought neutrally or whether he was a neutral, that involves a question of fact and law which is a conclusion and as to which nobody can speak except a most adroit lawyer. I can not. I am frank to say I can not state what a neutral is.

THE COURT: I shall permit the answer under the general rule.

MR. ANDERSON: May I note an exception, please.

THE COURT: Certainly.

XQ. 309. Did you say in this interview published in the Brooklyn Daily Eagle that "the only neutrals I know of in this country are in Greenwood Cemetery?"

MR. ANDERSON: I object on the ground that the evidence of what he said in that interview, it having been published, is the paper itself, which is the best evidence; and if they are going to examine him on it, I ask that it be introduced in evidence.

THE COURT: I do not see how you can reach that conclusion, Colonel Anderson. I think you must have overlooked the fact that he did not write the interview, so far as I know. Now then, he had an interview which was reported, I suppose, by the persons with whom he had it. There were two persons at least present at that interview. One was the person speaking. The other was the person spoken to. He is asking the person doing the speaking as to whether he made certain statements and I do not know of any better evidence than that, unless the interview was in writing.

XQ. 310. I think you answered just before Colonel Anderson had a chance to object.

A. What was the question?

XQ. 311. I will repeat it. Did you say in this interview that "the only neutrals I know of in this country are in Greenwood Cemetery?"

A. I may have expressed such a sentiment.

XQ. 312. Did you say in the interview as follows: "That my thoughts are with Germany in this war does not blot my Americanism?"

A. I do not know as I said that. I probably felt that way.

XQ. 313. Prior to the outbreak of the European

War, is it a fact to your knowledge that Germany had a monopoly of the dyes and pharmaceuticals?

A. Yes, sir.

XQ. 314. As you expressed it before the Shortride Committee, and I assume it was true, Germany had the whole world in their hands.

A. Practically.

XQ. 315. Practically?

A. Yes.

XQ. 316. And as you again expressed it before that Committee, Germany had the world by the throat——

A. Practically.

XQ. 317. ——with referenec to dyes and pharmaceuticals?

A. That is true.

XQ. 318. And it is true is it not that manufacturers in this and other countries that were using dyes were absolutely dependent on Germany for their supplies?

A. To a large extent, yes, sir.

MR. ANDERSON: Your Honor please, I wish to make the objection, not to the line of examination, although I think it is subject to technical objection, but to the fact that this matter is entirely outside of the original examination.

I wish to make the objection at this time because I gave notice in my opening statement and I wish to repeat that notice now, that I am going to object to any evidence relating to Germany's position before the War or Germany's attitude prior to our entrance into the War, on this subject, on the ground that it is utterly immaterial and irrelevant to the issues in this case; that that was not a question for either the Alien Property Custodian or this corporation to consider, but one for Congress.

I want to make that objection now both on the ground that it is not cross-examination and that it is utterly immaterial and irrelevant in the second place. I am not going to renew the objection except where it is necessary apparently to make the record clear.

THE COURT: Colonel Anderson, may I make one inquiry before I hear from Mr. Kresel? Does not the soundness of your contention depend upon the ultimate construction of the Act of Congress, not in the way you stated it, but in this way? If the power of seizure and sale was vested by Congress in the Alien Property Custodian, and the power to sell at private sale was authorized by the President or some officer designated by him, is not one possible construction of that Act that the power originally vested in Congress was transferred by it to the Alien Property Custodian with or without the order of the President?

MR. ANDERSON: I am going to try to answer that. I am just trying to get my answer direct to your Honor's question. If your Honor should hold that Congress had the power to delegate its legislative functions and discretion to the Executive Officer of the Government, then possibly there may be some contention of that kind.

THE COURT: I am not going to hold that.

MR. ANDERSON: But you have to cross that bridge before you get to any such possible construction.

THE COURT: Is there any merit in this thought —and I am not trying to confuse the matter of construction of the Act.

MR. ANDERSON: I understand, sir.

THE COURT: I am keeping away from the construction of the act. I will consider the act ultimately but not now. May not Congress be considered to have exercised that legislative function,

and not to delegate its legislative power to an Executive officer, but to have conferred upon the Executive officer or have made him the agent or the instrumentality for carrying out the provisions of the Act, by which Congress exercised its own power. I do not know whether that is sound at all or whether there is any merit in it, I can make no suggestion as to that; but without going into that, it seems to me in view of the wide scope we have given to the admission of testimony, the testimony must be admitted on any theory that may with any soundness be advanced as a possible construction of the Trading with the Enemy Act, and that we must either construe that act now or admit testimony which may be relevant under any possible construction of the act.

MR. ANDERSON: Your Honor, may I just say a word in reply? I bow to your Honor's decision without the slightest hesitation, but I wanted to get your Honor's consideration on this thought. I quite agree it is not only law but a fact that counsel should have the right in a case of this character, especially, to introduce any evidence which they think tends to support any reasonable theory of their case that they can advance, to the end that that theory may be properly argument to come before the Court. I quite agree with that. But in the second place, there is a limitation, of course, upon that principle, and of course it is for your Honor to determine how far now you are going to decide that limitation should go or where you are going to place it. Therefore, in making my objection I felt I ought to state that I can see—and I will make it deliberate—no possible construction of this act which can make the action of the German citizens or Government prior to 1919 of the slightest bearing upon the questions pre-

sented by this Bill and Answer for decision. I do not say that it is not a reasonable limitation.

THE COURT: I understand.

MR. ANDERSON: But I mean to say that no possible construction of the act can give that any bearing. Because if it can be considered, it involves the question of the highest policy which is vested in Congress exclusively and as to which Congress only can legislate or act, and it can not give that power to anybody else.

I have said this that your Honor might understand my position. I quite understand what your Honor's ruling is, that this evidence will go in, but I wish to note that I am objecting to all of this examination, without renewing the objection each time and taking exception, as has been done heretofore; and I further object to this examination as not being within the scope of the direct examination.

MR. KRESEL: The latter part is the only portion on which I would like your Honor to hear me. I consider this evidence directly bears on this witness's testimony as to value. Any history that we can present to your Honor with reference to this industry and the German control here prior to the war, as to which this witness has given your Honor figures as to his profits and as to his sales, I consider to be most material upon the question of value.

THE COURT: The immediate question before me now is what?

MR. KRESEL: Your Honor has ruled, as I understand, that the witness may answer the question.

THE COURT: I have forgotten what the question is and I do not know whether I have ruled on it.

MR. KRESEL: The last question was answered.

THE COURT: Then as to the scope of the cross-examination, we had that question with the first witness that was produced here, Colonel Anderson, and the same questions that are now arising arose there, substantially. So that I am not prepared to hold that this line is not in cross-examination. If you can at final argument throw doubt upon its value or show to me that the witness is answering questions that are not in cross-examination and that Mr. Kresel necessarily makes him his own witness as to them, I will hear you then; but I think at the present time they are not outside the scope of the cross-examination.

XQ. 319. Before the sub-committee of the Committee on the Judiciary of the United States Senate on Senate Resolution 77, at page 744, you testified as follows:

"Germany had a practical monopoly in the production of dyes and pharmaceuticals."

That was true, was it not?

A. Yes, sir.

XQ. 320. And at page 745 on that same occasion you testified:

"Germany had the monopoly; there is no question about that. They had the world in their hands. That is conceded, absolutely. There is no question about that. They had the whole world in their hands."

That was true, was it not?

A. Yes, sir.

XQ. 321. And at page 894 of the same record, the same proceeding, you testified as follows:

"Germany had the world by the throat absolutely."

That was true, was it not?

A. Yes, sir.

THE COURT: We will take a recess until 1 o'clock, Standard time.

AFTER RECESS

MR. ANDERSON: Without, I hope, appearing insistent, if your Honor please, during recess I have had an opportunity to look at this record from which a letter was read this morning purporting to have been signed by Albert, which I move to strike out in view of the fact that the record from which counsel read contained, immediately following the letter, the statement by the witness, Mr. Metz, who was before the Committee, as follows:

> "Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters."

In view of that fact appearing on the record in connection with a letter as introduced before the Committee, I respectfully suggest that that letter should be stricken from the record. In saying that I do not wish to impute to counsel any ulterior purpose in reading that letter. Frequently during an examination counsel do it thoughtlessly, and I did not wish to interrupt. But I do think, in view of the record accompanying the letter at the time it was brought to the attention of the Committee, that it should be stricken from the record.

MR. KRESEL: If your Honor please, I do not object to your Honor's granting the motion, in view of what Colonel Anderson has just shown.

Personally, I was not aware of the statement that Colonel Anderson now speaks of, except that I may say this: that your Honor will recall that when I asked the witness whether he had a letter of introduction from Albert, he said he had, and then I read this letter, and when he said that was not the letter, why, that settled it. So if your Honor desires to grant the motion, I raise no objection.

THE COURT: The motion is granted by consent.

XQ. 322. Mr. Metz, after the European war broke out, Germany placed an embargo upon the exportation from Germany of dyestuffs, did it not?

A. I was so informed.

XQ. 323. And not only dyestuffs, but also pharmaceuticals?

A. Everything, practically.

XQ. 324. You were instrumental, if I may put it that way, in trying to get dyestuffs from Germany for the American market?

A. Yes, sir.

XQ. 325. And in connection with that effort you wrote a letter to Mr. Tumulty, the Secretary of President Wilson, did you not?

A. Yes, sir, quite a number of letters.

MR. ANDERSON: Your Honor will understand, of course, this is subject to objection, which I made this morning, as being outside the direct examination.

THE COURT: Yes.

MR. ANDERSON: But I do not want to renew it, as I understand this is all taken under that objection, except that your Honor wanted me to call your attention to it.

THE COURT: I think so, yes. My impression at the moment, Colonel Anderson, is that this is

not outside the scope of cross-examination. So I overrule your objection to this question on that ground.

MR. ANDERSON: Exception.

XQ. 326. Before I direct your attention to this letter that you wrote to Mr. Tumulty I want to ask you whether before writing that letter you did not organize a committee of dye users and call with them upon Mr. Tumulty in reference to these German importations of dyestuffs?

A. I did not organize a committee.

XQ. 327. Did you call with the Committee?

A. The Committee called on me and I went with them to see Mr. Redfield and Mr. Tumulty.

MR. KRESEL: That is all I wanted to know. Colonel Anderson, I am looking now at page 268.

MR. ANDERSON: Of the same book?

MR. KRESEL: No, of the Hearings before the Sub-Committee of the Committee on the Judiciary of the United States Senate.

XQ. 328. Please look at this, Mr. Metz, beginning at the bottom of page 268 and running over onto page 270, and state whether that is a copy of the letter that you sent to the President's Secretary? (Handing witness book.)

A. I assume that is a copy.

XQ. 329. May I have it, please.

A. Certainly. (Handing counsel.)

XQ. 330. This letter is dated April 8, 1915. Up to that time had you succeeded in obtaining from Germany any dyestuffs or pharmaceuticals?

A. Yes, sir.

XQ. 331. Since the outbreak of the war?

A. Yes, sir, regularly.

XQ. 332. Up to April, 1915?

A. Up to the time of the Order in council which stopped further shipments.

XQ. 333. In other words, up to April, 1915, the American market had all the dyes it wanted?

A. It had sufficient dyes.

XQ. 334. You think it had sufficient dyes?

A. I think it had. We kept them supplied.

XQ. 335. But in April, 1915, there was this shortage, was there?

A. April 1st there was an order in council stopping all the importations.

XQ. 336. And a shortage occurred?

A. It gradually became short, naturally.

XQ. 337. And it was in connection with that that you wrote this letter to the President's Secretary?

A. Yes.

XQ. 338. You say in this letter: "My dear Mr. Tumulty"——This is addressed to Honorable Joseph P. Tumulty, White House, Washington, D. C.

> "My dear Mr. Tumulty: Referring to the visit of the committee that called on you Tuesday, I am enclosing herewith, as requested, extracts from some of the letters from textile manufacturers which I showed you.
>
> "I received all told about 450 replies in answer to about 1,000 circular letters which I sent out, mainly to the cotton, wool and silk mills, calico printers, job dye houses (that is, those dyeing for mills who do not do their own dyeing), and to some extent to the paper, wall-paper, leather, paint and printing ink, and other branches."

Prior to sending that letter then, you had sent circular letters to these various industries, had you?

A. I wrote to the industries inquiring of their needs.

XQ. 339. "I received approximately 270 replies giving definitely the number of employees in each mill which would be directly affected; a further 160 did not specify the number that would be out of work, but said

they would be compelled to shut down within 30 to 60 days and discontinue operation." That is true?

A. Yes, sir.

XQ. 340. "Those who gave the number totaled 260,000 employees. Assuming the other 150 to employ the same number of people, this would give an aggregate of approximately 400,000 people directly affected in those mills that replied."

A. Yes, sir.

XQ. 341. "As there are probably 1,500 to 2,000 plants of the kind to which I wrote in the various industries throughout the United States, it is easy to assume that probably 2,000,000 operatives will be affected directly, without considering at all those occupations or trades to which the output of the factories goes, and for which it is really the raw material. In other words, the cutters, garment makers, etc., and the jobbers, wholesalers, and retailers who handle the product all along the line until it finally reaches the ultimate consumer. Then, furthermore, we must consider that when the cotton mill shuts down it is no longer using cotton, nor the woolen mill or carpet mill using wool. Their supplies of machinery, machinery oil, coal, belting, and the thousand and one other items that enter into manufacturing must also suffer in proportion."

Now, when you wrote as I have just read and you speak of "suffering in proportion," do you mean suffering because of the lack of dyestuffs?

A. Certainly.

XQ. 342. That is what you meant?

A. Certainly.

XQ. 343. Now I skip a paragraph, Colonel, because I do not want to take any more time than is necessary, and I read as follows from this same letter:

"After leaving you I had a talk with Mr. Secretary Redfield,"

1819

Mr. Secretary Redfield was the Secretary of Commerce at that time?

MR. ANDERSON: That is agreed.

XQ. 343 (continued). ——who seems imbued with the idea that we are going to take up manufacturing in this country and has been 'assured' by some people that they can do these things. I have no desire to reflect at all on Mr. Redfield's judgment, but these optimistic reports about what we are going to do here in regard to dyestuffs have caused enormous damage already. There have been practically no dyestuffs made in this country heretofore, excepting from raw materials or intermediate products imported from Germany." Was that true?

A. That is true.

XQ. 344. "The basic raw material we have we have always had here, and after July 1 will have enough for all possible contingencies, viz., the benzol obtained from coke ovens. The next step is to treat the benzol with nitric acid, making nitro-benzol, which can also be done here, and that in turn yields the next step, aniline oil. Aniline oil is used for dyeing black and also for making certain very primitive and very fugitve colors in connecton with beta-naphthol and other intermediate products previously imported and which a number of people are 'going to make'."

And you put quotations around the words "going to make."

"But so far nobody has made except in a very crude form at one plant, and for its use only."

That stated the facts as they existed at that time?

A. Yes, sir, entirely.

XQ. 345. As a matter of fact, you go on to say in this letter: "There are only three manufacturers of beta-naphthol in the entire world, all in Germany." That was true?

A. Yes, sir, to the best of my knowledge that was true.

XQ. 346. "The product heretofore used here, a refined, pure product containing no admixtures of other compounds, sold at about nine cents per pound including five per cent duty before the war. None has been imported since; in fact, no raw material or intermediate products, excepting in very limited amounts for specific purposes, have been allowed to leave Germany, probably for the reason that Germany did not desire to encourage manufacturing of colors to her own detriment." And that was true?

A. Certainly.

XQ. 347. I skip the next two or three paragraphs and I turn over to the next page, Colonel. You say as follows:

> "The plant I am interested in abroad cost about $50,000,000 to erect and is capitalized now for only $12,000,000."

I want to stop there. What plant is it that you are speaking of in that letter?

A. The Hoechst plant which I was agent for, whose products I imported.

XQ. 348. "It employs about 8,500 people. There are two other plants of the same size, with a half-dozen smaller ones. It is fair to figure, therefore, that there are invested in the coal tar color and pharmaceutical plants in Germany three or four hundred million dollars, and probably 25,000 people are employed in all of the plants I refer to. But these plants supply the whole world with these products directly or indirectly."

Those statements were true?

A. Practically true; cover the situation.

XQ. 349. In the next paragraph you say as follows:

"It took the Germans 50 years to get to this point, and it will take us 20 years, with an exorbitant protective tariff, and then we would still be floundering, because it is more a matter of engineering and practice than it is of chemistry."

That was true?

A. I still maintain that opinion.

XQ. 350. You go on and say:

"It may be well to establish an industry, but while we are doing it what is going to become of the people working in the mills, which will simply be forced to shut down, because the German products are not available and can not be substituted?"

That is what was bothering you, is it not?

A. It was bothering me for the sake of my business, yes, sir.

XQ. 351. You go on and say:

"I know they are 'discovering' things"——

And again you put the word "discovering" in quotation marks.

A. Yes, sir.

XQ. 352.

——"in the newspapers every day, but the people who do it have no conception of the quantities involved or what the requirements of this country are. It is safe to say that 3,000 tons a month of various colors, which is practically what we have been getting from Germany since the war started, and which has kept us going fairly well, would not be two-thirds enough to keep us running if our mills were busy and we were running full."

That was a fair estimate, was it?

A. That is right.

XQ. 353. Now then, the fact is, is it not, that the same plants that were producing dyestuffs also produced pharmaceuticals?

A. Yes, sir. Some of them produced pharmaceuticals.

XQ. 354. Well, you say in this letter to the President's Secretary as follows:

> "I am not touching on medicines at all. Of most of these products we import there are probably three or four months' supplies here."

In other words, at the time you were writing there were three or four months' supplies of medicines here, medicines such as could be gotten only in Germany; is that right?

A. Shows that I was interested.

XQ. 355. Yes, that is what I am talking about.

A. Yes, sir.

XQ. 355-A. And then you say:

> "But the same plants that are making dyestuffs and chemicals are the ones that are making most of the synthetic and highly organic products, which have practically replaced most of the old things in medicine. We can go back and do the same as we did before they were invented, but it is not hard to see what that means. Undoubtedly some steps should be taken later on to make us a little more independent in some matters, through legislation or otherwise, but those things are for the future."

MR. ANDERSON: Have you finished?

MR. KRESEL: I have finished as much of it as I care to read.

MR. ANDERSON: If your Honor please, to save interruption of counsel, I would like to object specifically to the matter read from this letter, and to the questions and answers with respect thereto, on the ground that it is immaterial and irrelevant; on the grounds stated in my opening statement, and which need not be repeated; and on the further ground it is not within the direct exam-

ination and does not relate thereto. And I would suggest, if agreeable to counsel, that that objection be considered as applying to each specific question and answer thereto, and that, if overruled, an exception taken; provided your Honor should so decide. That would save me the necessity of interrupting.

MR. KRESEL: I have no objection to that at all.

MR. ANDERSON: That is agreed.

THE COURT: I think Mr. Kresel has not yet gone beyond the bounds of cross examination.

MR. ANDERSON: I just want to get my record straight.

THE COURT: I understand that your exception will be general, and that you may avail yourself of that at any time during this case, and you can make specific objection to any question that Mr. Kresel brings out.

XQ. 355-A (continued). At the time of the outbreak of the European War, were there any factories in the United States producing dyestuffs or colors?

A. Yes, sir.

XQ. 356. How many were there?

A. About half a dozen.

XQ. 357. Were there not only four?

A. Well, there were four larger ones?

XQ. 358. What were they?

A. The Schoelkopf plant in Buffalo, Heller & Merz in Newark, the Bayer plant in Albany.

XQ. 359. Yes?

A. My plant.

XQ. 360. When did that start?

A. That started back in '2 or '3 or even before that.

XQ. 361. When did the Central start?

A. That is quite a number of years back. It must have been twenty years before that.

XQ. 362. Before the war?

A. Yes.

XQ. 363. Were any of these factories that you have just mentioned manufacturing from intermediates that came from any other place than Germany?

A. Germany and England. Mostly Germany.

XQ. 364. All imported?

A. All imported.

XQ. 365. In other words, as you said as I have it here, before the Shortridge Committee, these four or six plants were what you would call assembling plants?

A. They were more than that because they imported much of their intermediates.

XQ. 366. Didn't you say they were assembling plants?

A. Well, practically, if you call it that.

XQ. 367. The Germans to your knowledge were seeking before the war to prevent any manufacturing of dyestuffs in this country; is that not right?

A. One of the German plants had a plant here.

XQ. 368. Will you answer my question?

MR. ANDERSON: I will have to add to my general objection that the question here not only asks for a conclusion, but, of course, is entirely outside of what I went into. It asks the conclusion of the witness as to preventing something being done. Under your Honor's ruling and subject to the objections which I have indicated we recognize that the counsel can ask the witness as to any facts he knows as to what was done, but as to the purpose and intent thereof, they must be drawn by the Court from the facts so proved. Therefore, I think the examination is improper on that ground in addition to the general objection stated.

MR. KRESEL: Upon cross-examination, your

Honor, it seems to me in view of the manner in which the Government has been permitted to put in its case on the direct, that I should be permitted to put to this witness the question that I just put to him.

THE COURT: I think it goes to value on cross-examination. If it is admissible at all it is particularly admissible here by reason of the relation of this witness to the German industry which he has disclosed.

MR. ANDERSON: I have no objection other than the general objection before stated. I am not renewing that objection because that is understood to apply to all this line of examination. The objection here was to the form of the inquiry which called for a conclusion of the witness and his judgment as to what the legal effect of a thing was.

THE COURT: This is cross-examination and that is given a very broad scope. You may take the answer.

MR. KRESEL: I think that question was answered, so I shall proceed to the next.

XQ. 369. Not only is it a fact that the Germans tried to keep anybody from manufacturing dyestuffs and pharmaceuticals here in the United States, but is it not a fact that they wrote to you and protested against your manufacturing here?

A. Yes, sir.

XQ. 370. I read to you a letter from page 668 of the Hearings before the Committee on Ways and Means, from Mr. Blank to the Farbwerke-Hoechst Company of Germany, dated August 5, 1915. I am going to ask you whether you received this letter. Suppose you look at it before I read it?

A. It is like a copy of one I received.

XQ. 371. Who is Mr. Blank?

A. Mr. Blank was a director of the Farbwerke-Hoechst.

XQ. 372. This letter is dated August 5, 1915, marked "confidential," and reads as follows:

"Dear Mr. Metz:

"Your friendly letter of the 14th ultimo received and I send my best thanks for your esteemed communication. I am still awaiting the receipt of the revised accounts sent by Mr. Spielhagen."

I want to stop there a minute. Have you a copy of your esteemed letter of the 14th that he is talking about here?

A. Not now; not with me.

XQ. 373. "Regarding the Bethlehem Coal and Iron Company and the Deutsche Bank, I have heard nothing, and I can hardly believe that under existing conditions the Deutsche Bank would support any such undertaking to the detriment of the German dyestuff industry.

"That Bayer is in back of it"—

Bayer refers to the Bayer Company, does it not?

A. The Farbenfabriken of Leverkusen, formerly Frederick Bayer & Company.

XQ. 373. (continuing) "That Bayer is in back of it, I believe even less, for I know from only recent reports that no German dye factory even considers during the present shortage of chemicals to manufacture anything new over there."

"Over there" refers to the United States, does it not?

A. Yes, sir.

XQ. 374. "Bayer would certainly not undertake, as far as one can see, to take up something new when the few articles (blue, Vesuvin, Bismark, brown, fuchsin) have already been delivered by them over there."

"We lay great stress upon the fact that you

personally will not participate in any manufacturing enterprise.

"The present condition can not last much longer. If our successful movement in Russia continues in the same ratio as during the last week, the Russians will finally get war weary and they will then be compelled to sue for a separate peace which would quickly change the situation.

"As soon as normal conditions return, those who took advantage of the present abnormal and uncertain conditions to build up new enterprises will later have to suffer heavily."

You got that letter, did you not?

A. Yes.

XQ. 375. I show you another letter from Mr. Blank dated September 28, 1915, and ask you if you received that; and while you are looking at it, please look at the one following that, because I would like to to know, also, whether you received that?

A. Yes, both of them.

XQ. 376. I am now reading from page 668 of this same volume. This letter is dated September 28, 1915, Hochst on the Main, addressed to Mr. H. A. Metz, New york:

"Dear Mr. Metz:

"From competitive circles we received the information that despite the fact that you have no dyestuff factory and are therefore not compelled to further the interests of your dyestuffs customers by manufacturing some new product, you have begun the manufacture of tar products in a factory of Prochaska.

"We refer to our previous correspondence, and beg you to inform us over here what and where you have, in your name or with your support, begun manufacturing.

"Unfortunately, it appears to be true that Bayer's representatives over there is viewed by all the factories as being, under the stress of cir-

cumstances, a matter of compulsion in manufacturing new products, against the agreement with Elberfeld."

What did you understand the agreement to be with Elberfeld?

A. I didn't know what agreement they had except they were controlled by Elberfeld, and apparently did not care what Elberfeld thought. They went ahead and made colors for this country.

XQ. 377. And the letter of November 12, 1915, from Mr. Blank:

"Dear Mr. Metz:

"Your detailed information, of October 20, re: Oscar II, thankfully received and carefully noted."

Have you that letter?

A. No, I sent it abroad.

XQ. 378. Have you a copy?

A. I do not believe I have. If I had, the record would have shown it. Mr. Garvan put the record in.

XQ. 379. You have not a copy that you can produce?

A. I have not a copy now.

XQ. 380. Have you a copy of any correspondence with your German firm abroad?

A. They were all given to the Alien Property Custodian, every one I had.

XQ. 381. Have you or have you not, that is my question?

A. I haven't with me today.

XQ. 382. Well, have you it so that you can produce it on Monday?

A. The Alien Property Custodian had them all; all I had.

XQ. 383. I am asking you whether you have?

A. I should say no, in general principles. I have some. I can't say which ones.

XQ. 384. I will ask you specifically now to produce next Monday the letter of the 14th of July, 1915, written by you to the Hoechst people abroad and also the letter of the 20th of October, written by you to the same people?

A. If it is not in the record, I haven't got it.

XQ. 385. I continue reading. This is what Mr. Blank writes to you:

> "We have entered into an agreement with all other German dyestuff factories not to manufacture anything new over-seas for the present, either directly or indirectly, and for this reason we are pained at the thought that you should, through your brother, be interested in the Prochaska in the manufacture of the new articles manufactured from orange, echtrot, ponceau, and chrysoidin. We must now await what we should tell the trade if we are again questioned."

A. Yes, sir.

XQ. 386. What did you reply to that letter? Have you that copy?

A. No, but I know what I replied.

XQ. 387. Where is the copy of your letter?

A. I did not keep it in all probability. I sent it abroad. I did not keep this personal correspondence.

XQ. 388. You kept no copies?

A. Not of those things. Letters on matters of business I kept. These are personal matters.

XQ. 389. You not only wrote to the President's private secretary about these dyestuffs, but you wrote to the President himself, did you not?

A. On various occasions.

XQ. 390. I mean President Wilson?

A. Yes, and he wrote me.

XQ. 391. I show you copy of your letter to Presi-

dent Wilson under date of November 7, 1914, which is reproduced at page 775 of these Hearings before the Sub-Committee of the Committee on the Judiciary of the Senate beginning there (indicating). Please glance over it?

A. That is right. That looks like a copy.

XQ. 392. In this letter—I shall read only portions thereof—you say to the President of the United States:

> "The manufacturers of the United States as well as those of every other country in the world are practically dependent upon the German manufacturers for their supplies of dyestuffs and chemicals."

A. Yes, sir.

XQ. 393. When you spoke of the manufacturers, did you include among those the textile industry?

A. Yes, sir.

XQ. 394. The cotton industry?

A. All consumers.

XQ. 395. I am trying to have you enumerate them. That is what I am after. The textile industry?

A. Yes, sir.

XQ. 396. The cotton industry?

A. Yes, sir.

XQ. 397. The wool industry?

A. Yes, sir.

XQ. 398. The silk mills?

A. Yes, sir.

XQ. 399. The calico printers?

A. Yes, sir.

XQ. 400. The leather manufacturers?

A. Yes, sir.

XQ. 401. Paper manufacturers?

A. Yes, sir.

XQ. 402. Wall paper?

A. Yes, sir.

XQ. 403. Paint?

A. Yes, sir.

XQ. 404. Ink?

A. Ink.

XQ. 405. Any other that I have omitted?

A. Some food products; every one that used color was interested.

XQ. 405-a. You say in this letter to the President:

> "At the outbreak of the war, Germany placed an embargo upon the exportation of all products of this kind. The supply in the hands of importers in the United States was about sufficient to run our mills from six weeks to two months."

That was the fact?

A. Substantially correct.

XQ. 406. You say that after allowing two or three small shipments to come through a new embargo was declared by the German Government, which insisted first that vessels flying the American flag must be provided to transport these goods and, second, that a guarantee must be provided by the United States that no goods would be exported to any country with which Germany was at war?

A. Yes, sir.

XQ. 407. That was true?

A. That was true.

XQ. 408. In connection with your efforts to get importations of dyestuffs from Germany during this critical period you not only wrote to the President and to his private secretary, but you also wrote to the Secretary of State Mr. Bryan at that time, did you not?

A. Yes, sir.

XQ. 409. And on the other side you were in communication with Mr. von Bernstorff?

A. Through the State Department and for the State Department.

XQ. 410. You were in communication with Mr. von Bernstorff?

A. Yes, sir.

XQ. 411. Who was the Ambassador of Germany to the United States at that time?

A. Yes, sir.

XQ. 412. Without going into great detail about it, is this what you accomplished: You arranged with von Bernstorff that Germany would allow two shipments by two vessels, one named the Matanzas and the other named the Sun, shipments of dyestuffs to come through, provided the persons to whom the shipment was to be distributed in the United States would give a bond that they would not export what was given to them and that the United States would guarantee them?

A. That request came from the State Department.

XQ. 413. I did not ask you where it came from.

A. I could not make the arrangements myself without the State Department.

XQ. 414. I asked you if that was the result of your efforts?

A. I can not say of my efforts. The State Department's efforts. I became the medium for the State Department.

XQ. 415. I tried to shorten this, Mr. Metz, but if you will insist on that I will read to you the documents.

A. Well, go ahead; I can not answer yes or no to that.

XQ. 416. Very well, I will take it up in another way. I read to you from this letter to the President, at page 776. Listen to this: "After consultation with the Acting Secretary of State and the Solicitor of the State Department"—this is what you are writing to the President.

A. Yes, sir.

XQ. 417. "And with their approval, I placed the matter before Count von Bernstorff, the German Am-

basador, whereupon he telegraphed to his Government that there was no basis under our law permitting the United States Government to give or enforce such a guaranty; but that it would obtain, through me, from all importers a written guaranty that they would use every legal means to prevent exportation and a statement that they would agree to furnish any bond that the Government might prescribe." Now, that was the fact?

A. Those are the facts exactly.

XQ. 418. You say that in reply to this telegram Count von Bernstorff received official information from Berlin. How do you know that?

A. He told me.

XQ. 419. "That the German Government considered the guarantees to be filed with the State Department through me to be satisfactory, but nevertheless deemed it necessary to require a bond, and that such a bond should be given to me personally." Was that so?

A. Yes, sir; the letter is in the record stating that.

XQ. 420. In other words, Count von Bernstorff told you that his Government required as a condition of allowing dyestuffs to come through that a bond be delivered to you?

A. Yes, against re-exportation.

XQ. 421. Now, Mr. Metz.

A. I beg your pardon.

XQ. 422. Please. You have been very good, now please continue.

A. I will try to stay so.

XQ. 423. Were bonds subsequently delivered to you?

A. Yes, sir.

XQ. 424. And you held them for the German Government?

A. I held them against re-exportation, as directed by the Department of State.

XQ. 425. You held them for the German Government?

A. I held them for the importers—that they would not export.

THE COURT: Strike out the answer, Mr. Stenographer.

XQ. 426. Mr. Metz, did you not hold these bonds for the German Government?

A. I did not so consider myself. I considered I was doing it for the interests here.

XQ. 427. I read to you from page 746 of this record.

MR. ANDERSON: The same record?

MR. KRESEL: Yes.

XQ. 427. (continued) Perhaps this will refresh your recollection: "Mr. Metz. They would give a bond that they would not export these goods; that is, the people who receive these goods or these dyes from abroad, they could not export them.

"THE CHAIRMAN: Just a moment there: I want to follow that. Dyes imported or shipped to you?

"MR. METZ: No, no; not to me.

"THE CHAIRMAN: To whom?

"MR. METZ: To the consignees, who received these dyes from abroad.

"THE CHAIRMAN: Binding them to you—

"MR. METZ (interposing): The Government could not take the bond. I was to hold the bond for the German Government."

Did you testify that way?

A. I testified that way, yes.

XQ. 428. Was it true?

A. Certainly it is true.

XQ. 429. Then why did you fence with me a little

while ago when I asked you a dozen times whether you hold them for the German Government?

A. Why didn't you ask the full question, Mr. Kresel?

XQ. 430. Do you mean that you will testify here only what I can read to you from books?

A. I will testify to facts as they exist.

XQ. 431. Well, you did take the bonds, did you not?

A. Yes, sir.

XQ. 432. And after you got through those two shipments Germany shut down again, did she not?

A. No, sir; she did not shut down.

XQ. 433. How many shipments did you get through?

A. I got no more. I was not interested further; but they came through, half a dozen more came.

XQ. 434. After those two shipments is it not a fact that no more dyes or pharmaceuticals came in from Germany until the submarine Deutschland got here?

A. No, sir; it is not true.

XQ. 435. How many more shipments came in?

A. There were two more on the Matanzas and two or three boats, I think, until April 30th, when the order in council went into effect, and some arrived after that.

XQ. 436. What year was that?

A. 1915, when the British order in council went into effect.

XQ. 437. Between April 30, 1915, and the time when the submarine Deutschland got here did any dyes or pharmaceuticals come here from Germany?

A. Not to my knowledge.

XQ. 438. When did the Deutschland come?

A. I guess it was in—1916, was it?

XQ. 439. July, 1916?

A. On the first trip. She made two trips.

XQ. 440. The next one was in November, 1916?

A. I think that is in the record.

XQ. 441. You were one of the consignees of the dyes that came on the Deutschland, were you not?

A. Yes, sir.

XQ. 442. Were you not the one that was placed in charge by the Germans of distributing their dyes that came on the Deutschland?

A. I was not.

XQ. 443. Who was?

A. I don't know as anyone was. I think Mr. Albert had charge of it.

XQ. 444. Doctor Albert?

A. I think so, yes.

XQ. 445. Is this letter that I have been reading from, your letter to the President, the only letter that you wrote him in connection with this dyestuff importation?

A. I do not recall it. It is in the record. There were others, I presume.

XQ. 446. Don't you remember writing another letter to him?

A. Yes.

XQ. 447. You were quite interested in this situation, were you not?

A. Naturally.

XQ. 448. You went to the trouble of having printed your correspondence with the President, the Secretary of State and the other officials about this matter?

A. For the use of the consumers; yes, sir.

XQ. 449. And you distributed it among consumers?

A. Yes, sir.

XQ. 450. Look at this photostat of one of your pamphlets and state whether that is a copy of another letter that you wrote to the President (handing witness)?

A. I assume so, yes, sir.

XQ. 451. What?

A. I assume so.

XQ. 452. I want to read this letter to you. It is dated June 16, 1915. As I get your testimony, it is that after April, 1915, and up to July, 1916, no dyes came from Germany?

A. July, 1916?

XQ. 453. Between April, 1915, and July, 1916?

A. Not until the submarine got here.

XQ. 454. On June 16th, 1915, you wrote to the President of the United States as follows:

"Hon. Woodrow Wilson, White House, Washington, D. C.

"My dear Mr. President: I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals."

May I stop there a minute to inquire what your interest was in this thing. Was it that you were missing the revenue that you had been obtaining from selling these goods?

A. I was in the dyestuff business. Naturally, I wanted to take care of my customers.

XQ. 455. That is all I wanted to know.

A. And I was a consumer.

XQ. 456. "Efforts are being made to have the recent 'Order in Council,' allowing two shipments to pass, modified somewhat so that shipments will be allowed through on a basis that Germany will agree to."

Were you speaking for Germany?

A. No, I knew the facts.

XQ. 457. You had no relation to Germany whatsoever?

A. None whatever. No interest.

XQ. 458. Your communications with Count von Bernstorff you could consider simply friendly intercourses?

A. For the purpose of getting dyestuffs to this country.

XQ. 459. Yes.

A. Absolutely, and no other reason.

XQ. 460. In this connection you go on to say to the President of the United States: "An extract from a letter received from Justizrath Dr. Adolph Haeuser, president of the 'Verein zur Waehrung der Interessen der Chemischen Industrie Deutschlands' in Berlin"—which I will translate in a minute—"and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26th, will probably interest you." Before I read the quotation which you have here of this letter from Dr. Haeuser, I want to know where that letter is.

A. I gave it to the representative of the Alien Property Custodian who examined my books in my office, I assume. If it was there he got it.

XQ. 461. Where is it now?

A. I don't know. I did not get half of the stuff back.

XQ. 462. You got some back, did you not?

A. Some of it I got back, yes.

XQ. 463. Did you get that back?

A. That I do not know. That is where they got it, though.

XQ. 463-A. Will you look among your papers and produce here next Monday morning this letter of Dr. Haeuser a quotation of which you are sending to the President of the United States?

A. I do not think I can find it, because I got most of the stuff here now, and that was not amongst them. That was eight years ago.

XQ. 464. This is what you say Dr. Haeuser wrote

to you: "I note that you have carried out your plan to organize 'an American Dyestuff Consumers' Association.' We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government.

"Any other standpoint would be unworthy of America or Germany. We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles according to whether Germany or England is concerned in the question."

May I stop here a minute. Were those your sentiments?

A. Yes, and I think it was quite true. The general sentiments.

XQ. 465. "England might simply deny American suggestions off-hand and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good will of America. When Germany, however, does anything towards using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to give you all the dyestuffs that you need."

That is what Haeuser wrote to you?

A. Yes, sir.

XQ. 466. And that is what you transmitted to the President of the United States?

A. Yes, sir

XQ. 467. In other words, you transmitted to the

President of the United States a statement by Haeuser who says that was also the sentiment of the German Government, that only if America would compel England to lift her blockade, could America get dyestuffs or pharmaceuticals from Germany?

A. He did not say that. He said if we gave them cotton, they would give us dyestuffs.

XQ. 468. I will read you again:

"I hope America will succeed in forcing England to stop interfering with commerce between Germany and America."

A. Yes, sir.

XQ. 469. "And if so, you will find us only too glad to give you all the dyestuffs that you need."

Then you go on, writing to the President:

"I submit this was the situation as it is developed by Dr. Haeuser, who at the present represents officially the entire chemical industry as President of the Berlin organization. This simply indicates that they have available goods in Germany which we need here and which we can get if Germany is assured that the goods will not be taken back by England and that she will get cotton in return. I submit this extract to you for what it is worth, knowing that you appreciate the situation, and assuring you that so far as I am concerned I fully appreciate the delicacy of the situation that confronts us."

A. Exactly so, and I discussed it personally with the President.

XQ. 470. Now, Mr. Metz, you testified before the Senate Committee, page 298:

MR. ANDERSON: Which volume is that?

MR. KRESEL: That is the Committee on Finance.

XQ. 470. (continued) "The Germans took out patents here for everything. They took advantage of our patent laws, which gave them a right to patent

anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you can not blame them for taking advantage of them. They patented everything in sight, which was perfectly right, so as to protect themselves. The patent laws gave them that advantage, and they said, 'Why should we build plants in America? We are all scattered now and America does not use ten per cent of our output.' "

Did you so testify?

A. That is the substance of what I had in mind, whether I testified or not.

MR. ANDERSON: One minute. As this is apparently a new subject, I wish to renew the objection which I made at an earlier stage. Both the general objection of immateriality, irrelevancy and incompetency of this evidence, and that it is outside of any matter in the direct examination.

THE COURT: Will you tell me, please Colonel Anderson, just what, in your theory, is the limit to the testing of the credibility and the interest and possible bias of the witness?

MR. ANDERSON: I think it is extremely difficult to lay down any rule on that question. That is a matter in which the discretion of the Court is necessarily broad. But I do not think that it is quite competent to show the relationship of the witness to any of the matters referred to in the testimony. That is not quite competent. But if a question of this kind, and I think the examination which has preceded it, had any relevancy here whatever, I should not object in the slightest. My chief objection is that I do not think we can fight the war over in this case. That has been settled on the field of battle. And the question just asked as to the fact that the Germans took out patents, what the Germans did in 1915 or before the war,

certainly can not be relevant and can not have any possible bearing upon the decision of this case, or indeed, the testimony of this witness on direct examination, which went purely to the question of values.

THE COURT: Succinctly, what do you say is the specific objection to this inquiry taking into consideration that there are two fields that Mr. Kresel has a right to go into fully, namely, credibility, and the substance of his testimony, namely, values. May this not apply to either? If not, why not?

MR. ANDERSON: On the question of credibility you can show that a witness has made conflicting statements with those which he now makes. You can show any matter which tends to show mental prejudice against any factor in the case.

As I have said, the question of credibility is a very broad one, and I would not undertake to lay down, and I do not know of any authority that does lay down, any hard and fast rule on that subject. Every case must be decided by itself by the Court in the exercise of a sound judicial discretion.

I recognize that your Honor has a very broad discretion in allowing examination of this kind. I do not wish to interrupt it. I recognize that counsel should be given in this case rather unusually broad scope, on account of the character of the case. But I can not (it may be my own mental deficiency)—but I can not see the possible relationship to the issues in this case of the acts of the Germans in the effort either to gain an international advantage, in war or otherwise, before the war, when it has been fought out, or the fact that they did or did not import dyes, or any of the issues which were settled by this war.

In so far as they effect the credibility of this witness, if any connection between the two things can be pointed out, I recognize that your Honor's discretion will apply there. The only thing I can say under those circumstances when it seems to me to be not only absolutely immaterial and irrelevant upon any possible issue in the case, but also without any relevancy to the question of credibility or interest of this witness, that having been disclosed, is that it is not legitimate evidence

Therefore, I merely want to renew my objection, a new subject having been taken up, so that the record may be complete. Of course, I shall not attempt to argue against a ruling.

MR. KRESEL: If your Honor please,—

THE COURT: I was going to ask you if you would be good enough to state to me, Mr. Kresel, upon what issues the facts intended to be elicited by your question bear.

MR. KRESEL: As your Honor will see, the particular question to which objection has now been made refers to German patents. In other words, this question considers the very patents that are in issue here, as to which this witness undertook to give testimony. Furthermore, the passage that I have quoted here shows that the Germans did not work their patents here in the United States, and the reasons why the Germans did not do it, is given.

Now, upon the question of value, it is certainly material to show that the patents were not worked here, and not having been worked here, there was not the information necessary to make them valuable. This is of the utmost importance upon the question of value.

But quite aside from that, your Honor, I am glad of the opportunity that Colonel Anderson

has given me, with a challenge that I am seeking here to re-fight the war. I am not. My examination of this witness is directed solely to showing his interest, to showing his German connection, to showing that he is the one behind this litigation—as I shall show.

When I said in my opening that there was an invisible plaintiff here, he is no longer invisible, sir. And when the Government comes here and asks your Honor to upset the solemn act of the President of the United States, upon the testimony of a witness like that, can we be estopped from showing to the Court every German act and every German connection that this man has? to show that he is today the representative of the Germans? to show that he is here; so that if your Honor should enter a decree that these patents should go back to the Germans, am I to be estopped from showing that within a year he has been in consultation with the Germans, telling them that he will get these patents back, and discussing with them what should become of them?

MR. ANDERSON: Are you through?

MR. KRESEL: Yes.

MR. ANDERSON: If your Honor please, I think counsel has gotten abnormally excited—

MR. KRESEL: Abnormally what?

MR. ANDERSON: —upon the question. If he had asked a question which had any relation whatever to showing the things which he has suggested, outside of the pre-war association, I should not have objected, except for this reason:

I shall object here in the Court in the performance of my duties as I object now to the suggestion of counsel. I read to your Honor at the opening of this case a direction by the President of the United States to bring this suit, and it is

brought by the Attorney-General of the United States, its highest law officer, in the name of the Government of the United States. I first deny in the most emphatic terms that I can put upon the record, that there is an invisible plaintiff in this case, or any other kind of plaintiff, except the Government of the United States—and I am not sure that in making that statement, I am not, to some extent, adding a certain quality of dignity to an attack upon the good faith of the President and Government of the United States which I should not give.

Now, I deny every statement with respect to any relationship of this witness to the bringing of this suit.

THE COURT: May I, Colonel Anderson, make this inquiry?

MR. ANDERSON: Yes, sir.

THE COURT: I take it that there is no suggestion or intimation on the part of Mr. Kresel towards questioning the bonafides of the act of the President of the United States. If so, and it is discovered, I will take care of that situation.

MR. ANDERSON: I feel sure that is true, but—

THE COURT: But I fail to see just the basis for your apparent criticism of the act, because, as I understand your position, you are here to challenge the acts of the President of the United States on the ground, not that he was acting in bonafides—

MR. ANDERSON: Certainly not.

THE COURT: —but on the ground that he was misinformed, and that he acted without sufficient information, or under misinformation or erroneous information. Do I state your position correctly, Colonel Anderson?

MR. ANDERSON: I think substantially you state the position; that is, part of it.

THE COURT: Then as I understand Mr. Kresel, his argument is to the effect that one President of the United States has possibly acted in the same manner in which you charge another President of the United States acted. Am I correct, Mr. Kresel?

MR KRESEL: Yes, your Honor. I want to say here, because—

MR. ANDERSON: Allow me your, Honor—This is quite a delicate matter and I do not want to take up the time—

MR. KRESEL: May I answer the Court's question, Colonel, and then you shall be heard?

MR. ANDERSON: Certainly.

MR. KRESEL: I do not want to be understood as in the slightest degree either directly or indirectly reflecting upon the good faith or the proper motives of the President, the Attorney General, or any of the gentlemen here concerned, who are trying this case.

But I do say—and I say we shall prove it—that this litigation was instigated by this witness and those whom he represents, and that such representations were made to the Government as to have led the Government to take this step which it has taken. In that respect, as your Honor has very well pointed out, the situation is no different from what the Government claims was the situation when President Wilson confirmed the act which they are now here attacking, or when the Alien Property Custodian conveyed the properties, which conveyance they are now here attacking.

I do not want to be understood as in any way reflecting upon the Government. I made that statement at the outset of the case. I recall upon

the first occasion when we appeared before your Honor, when Dr. Holderman was being examined here, the Government counsel thought that there was claim being made that this action was not being prosecuted in good faith by the Government, and we disclaimed any such claim. But we do say that we have a right to show, as we shall show, who it is that is responsible for getting the Government to bring this suit, and what their motives are—not what the Government's motives are.

MR. ANDERSON: Now, may I reply, if your Honor please?

I regard this matter as one of great delicacy.

If it were regarding myself as member of this Bar, I should not take up your Honor's time to make any statement at all. But in view of the fact that it is in regard to the actions of two Presidents of the United States and of the high officers of the Government, I think it is proper —and I may be mistaken, but I deem it almost essential—that I should make a brief statement in reply to what counsel has said, if your Honor will indulge me.

I am very glad to have the statement of counsel that he does not for a moment question either the purpose or the good faith of the Government of the United States at any stage, or of the President or Attorney General. So far as the counsel in this case are concerned, they are obeying the orders of their superiors and conducting the case in accordance with those instructions.

But, in the first place, the question asked had absolutely no relation to the subject under discussion here. It was brought in by counsel, and the very able counsel for the defendant here, with his ability in the choice and use of language, certainly was most unfortunate in the choice of

such language if he did not intend his former statement to this Court, made with some excitement, to be a reflection upon the motives and purposes of the Government.

THE COURT: Colonel Anderson, I shall not let you proceed on that theory or on that discussion, because that has been developed by counsel openly and fully, and that is a closed matter.

MR. ANDERSON: Certainly, I recognize that; but I am explaining why I brought the challenge.

I accept his statement fully on behalf of the Government; but I want to say, in the first place, that we are attacking here the legality of an act. We are attacking it with a respect for the hight officers concerned in that act, which, if I have not made clear, I desire to make clear.

But the right to attack the legality of an act is not only a right, but a duty of the Government of the United States, representing all the people, no matter how high the officer is, in the Courts, in an orderly and in a proper way. On the other hand, the legality of the act of bringing this suit can not be asailed except on one ground of improper motive.

THE COURT: There is no question about that, Colonel Anderson.

MR. ANDERSON: Therefore, what possible relation can that have to the bringing of this suit, except by that method? It can not affect the issues in this case. It can not affect the legality, except in the effort to prove what counsel have already stated that there was an invisible plaintiff. Therefore, the position of the Government here in raising a strictly legal question—an absolutely legal question—as to an act of the officers of the Government, and on legal grounds, declaring that confidence in good faith and motive at the very out

set and throughout this Bill, carefully drawn with that end in view, is one thing; but an attack on the legality of the President's action in directing this suit, or that of any one else, is another thing and, therefore, it can have no bearing upon this issue.

THE COURT: The testimony is not offered on that ground, and the only reason for the discussion of that point, Colonel Anderson, as I understand it, was your remark challenging the propriety of any person questioning the act of the President when directing the bringing of this suit; and that involved, it seemed to me, an understanding on my part of just what was being discussed by counsel for the respective sides, and I asked you each if I stated correctly your views, approximately, and you said yes.

MR. ANDERSON: I said, as far as you went.

THE COURT: Yes. Now then, we have come back to a legal basis, if I understand you, and that is a closed transaction—a closed incident.

MR. ANDERSON: Certainly.

THE COURT: Now we are back to the question, are we not? Let us have the question read.

(XQ. 470 repeated as above recorded.)

THE COURT: I think, Colonel Anderson that the limitation of discretion is exceedingly broad in cross-examination with respect to the prior activities and views of the witness pertaining to the chemical or dye industry in any way, because we cannot stop with one factor or factors and get a clear and comprehensive idea of the witness's mental attitude towards the matters with respect to which he is testifying. He has placed values upon the patents and trademarks. What the value really is, I should assume, in the absence of information to the contrary, depends in large meas-

ure upon the situation and condition and status of the chemical science and the dye science of this country at the time of the sale in 1919. So that I take it that this question is not without its bearing or relevancy to both of those reasons for inquiry. I therefore overrule your objection and note for you an exception.

MR. ANDERSON: All right, sir. I will call your Honor's attention only to the fact that this question relates to what happened long before 1919.

THE COURT: But is that not disclosing a condition of fact which has not been shown? I do not see how all these facts can be obtained or disclosed of record save by an inquiry covering a reasonable period of time prior to May, 1919.

Now, then, is there a thought in your mind, Colonel Anderson, that this inquiry is entirely wrong under any circumstances, regardless of the date?

MR. ANDERSON: This is with regard to the taking out of patents prior to the war. Now, if your Honor will permit me to read this paragraph:

> "They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you cannot blame them for taking advantage of them. They patented every thing in sight, which was perfectly right, so as to protect themselves."

THE COURT: I wonder if there is not this difficulty in the way of your considering that matter in the way that it seems to me it should be considered. We are not dealing with facts as facts independently of this witness. We will assume his testimony goes to the value of the patents.

Now, must not those matters all be brought to the mind of the witness in order to determine whether, in view of all those facts which existed prior to 1919, were taken into consideration by him in placing his estimate of value on the patents?

MR. ANDERSON: If your Honor asks the question, I will answer in just a few words that if any one can possibly connect the question of the value of these patents, all of which have been seized by the Alien Property Custodian in 1919, with the fact that the Germans took out the patents freely as provided by the Patent Law in 1913 or 1914—if there can be any connection between that value and the fact that these patents have been taken out freely, I would admit that there might be very intangible connection that might be established.

But I am frank to say that I probably can not understand it and therefore I did not want to get into a discussion of the matter. Your Honor will of course relieve me of that position. I only got up to renew my objection because it was a new subject, but we unfortunately got into a rather extended discussion.

THE COURT: I thank you, Colonel Anderson. I think the question is admissible. The weight of the answer is purely another matter.

MR. ANDERSON: I wanted to make the statement that I would like to have that objection considered as made to each question and answer on this line of examination, as before, with an exception.

THE COURT: Very well. All questions are objected to with an exception noted to the taking of the answer.

XQ. 471. The question is, Mr. Metz, whether you testified as I read to you?

A. I do not recall what you read, Mr. Kresel. Will you repeat it?

XQ. 472. I do not want to repeat it over again, but it is this paragraph that I show you.

A. Yes, sir, that is correct.

XQ. 473. And that was true?

A. That was true.

XQ. 474. And with the exception of the Bayer plant up in Rensselaer, near Albany, N. Y., the Germans did not manufacture here?

A. Not so far as I know at that time.

XQ. 475. And even that plant manufactured with imported raw materials from Germany?

A. Some things.

XQ. 476. I read to you from page 865 of your testimony before this Committee on the Judiciary, as follows:

> "MR. GARVAN: Just assume for a moment that Germany wanted to sacrifice some money to regain control of the world market.
>
> "THE CHAIRMAN: (Interrupting) That is what I was asking Mr. Metz a moment ago, and he, I think, answered it: They could depress the price so as to defeat the object we have in view.
>
> "MR. METZ: Yes.
>
> "MR. GARVAN: They would only have to raise their price in countries that do not manufacture it.
>
> "MR. METZ: Yes, certainly."

That was true, was it not?

A. That was true, undoubtedly.

XQ. 477. Prior to the war, did not the Germans to your knowledge use what is known and what you have described in your testimony, as I shall read in a minute, "full line forcing"?

A. Not the concern I was—

XQ. 478. Wait a minute. I had not finished my question.

A. All right.

XQ. 479. —by means of which to maintain their dye and pharmaceutical monopoly in the United States?

A. Never to my knowledge.

XQ. 480. Well, do you mean by that that they never tried it on you?

A. I never tried it with my customers.

XQ. 481. I didn't ask you that.

A. That is all I can answer. They didn't sell them. I sold them.

XQ. 482. Don't you know that the German factories that were represented here did that?

A. Not to my knowledge.

XQ. 483. What is full line forcing?

A. I understand it to be a system of pressure that you must buy of them to get a thing you want, probably.

XQ. 484. In other words, that the Germans declined to sell to a consumer any particular dye or color that he wanted unless he would buy all the colors and all the dyes that he needed; was that your understanding?

A. There was no German selling here, Mr. Metz—

MR. ANDERSON: One moment. The witness did not testify to that.

MR. KRESEL: I was asking him.

MR. ANDERSON: You did not summarize the witness's testimony. The witness has testified that he did not know of any such practice of his knowledge, and therefore when Mr. Kresel says the Germans did this, he is putting in the mouth of the witness something he did not say.

MR. KRESEL: I beg your pardon, Colonel. I think if you will bear in mind what I asked him before, you will see that the question is proper.

THE COURT: Will you repeat the last two or three questions, Mr. Stenographer.

(Repeated as recorded above).

THE COURT: There is injected into that question, I think, Mr. Kresel, an inference or implication, should he answer it, that the Germans did engage in that practice. I thought the question was the abstract one as to whether that was his understanding of full line forcing.

MR. KRESEL: May I withdraw the question?

THE COURT: Yes.

MR. KRESEL: I do not think it has been answered; so no harm has been done.

XQ. 485. Your understanding of the practice was that the Germans would decline to sell any particular color unless the customer would buy all of its colors from them?

A. I did not say so.

XQ. 486. I am asking you whether that is your understanding?

A. My understanding of full line forcing; not what the Germans did.

THE COURT: I will protect you, Mr. Metz, if you will take care of yourself.

THE WITNESS: I thank your Honor.

MR. ANDERSON: I submit, if your Honor please, that even with the particular latitude on cross-examination when you undertake to summarize the testimony of the witness, you can not put words in his mouth.

THE COURT: I understand your contention and I think your objection is well taken to this question.

MR. KRESEL: Well, I will try again.

XQ. 487. Will you tell me again what your understanding was of full line forcing?

A. My understanding of full line forcing is that a

concern would compel a competitor or consumer or customer to buy everything from him in order to let him have a certain thing that he wanted, a certain product that he really needed. That would be full line forcing in my opinion.

XQ. 488. And did the Germans indulge in the practice called "dumping"?

A. I never heard of it.

XQ. 489. Never heard of that either?

A. No, sir. My people never did and I didn't.

XQ. 490. Tell us, please, what you understand by the word "dumping"?

A. By the word "dumping," I understand, selling goods below the cost of production for the sake of getting a market somewheres as against home manufacturers.

XQ. 491. And did the Germans resort to the bribery of dyers?

A. Not to my knowledge. The Germans never did. Their agents here may have.

XQ. 492. Did you?

A. No, sir; I did not.

XQ. 493. You were sued, were you not, in the State of Pennsylvania under the Sherman Anti-Trust Act and the allegation was made against you that you had indulged in bribing the dyers of the plaintiff to use your colors in preference to anybody else's?

A. That did not make it so.

XQ. 494. I did not ask you whether it made it so. You were sued, were you not.

A. There was such a suit.

XQ. 495. And you settled that suit by paying $40,000, did you not?

A. Settled the suit on the basis of a compromise with the people who sued.

XQ. 496. $40,000?

A. I can explain the reason for it. It is in the record.

XQ. 497. $40,000?

A. Yes, sir.

XQ. 498. I show you a letter printed at page 509 of the Committee on Finance of the United States Senate, dated at Hochst-am-Main, March 30, 1914 from Dr. Haeuser to you and ask you whether that is a copy of the letter you received.

A. Yes, sir, it is.

XQ. 499. I also show you a letter printed at page 677 of the hearings before the Committee on Ways and Means, a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913 and ask you whether that is a copy of a letter you received?

A. Which date is this, Mr. Kresel?

XQ. 500. July 31, 1913?

A. Yes, that is the letter.

MR. KRESEL: I am simply having the witness identify these, your Honor, and when I am through with him, I will offer them in bulk and not stop here to offer them.

XQ. 501. Salvarsan was discovered by Professor Ehrlich in Germany, was it not?

A. Yes, sir.

XQ. 502. And he discovered it in the dye factory of the Farbwerke-Hoechst people?

A. No, sir; he did not discover it in the dye factory. He discovered it in his own laboratory in the Speyer House in Frankfort. He worked in connection with the dye factory. They furnished the materials.

XQ. 503. The technical name of the drug is arsphenamine?

A. No, sir; that is a name coined here. The technical name is diaminodioxyareenobenzol—or benzene.

XQ. 504. Do you mean that the word arsphenamine is an American designation?

A. It is an American designation adopted here after the license was granted.

XQ. 505. The product is sometimes known as 606?

A. That was the original name before they gave it a trade name.

XQ. 506. And in 1911, the German Farbwerke-Hoechst Company took out United States letters patent covering that product?

A. I think that is the date.

XQ. 507. The date will be shown on the patent?

A. It will be shown by the patent, yes.

XQ. 508. When the war came on did you have any of that preparation on hand?

A. I had some stock.

XQ. 509. I mean when the European War broke out?

A. Yes.

XQ. 510. In August, 1914?

A. Yes, I had some.

XQ. 511. The United States Army was a very large user of that drug, was it not?

A. Not at that time.

XQ. 512. I mean when we went into the war?

A. Oh, yes, supplied in very large quantities.

XQ. 513. Indeed, as early as September, 1915, long before we went into the war, do you not recall that the United States Government was seeking to obtain salvarsan from you?

A. Yes, certainly.

XQ. 514. And that you could not supply it?

A. I didn't have any of it to give them any more and they had to get it from abroad and got it.

XQ. 515. You told them you could not supply it?

A. I did not have any stock probably at the time: I do not remember the details of how much I had.

XQ. 516. And is it not the fact that Germany in

1915. and 1916 refused to ship any salvarsan to the United States unless you distributed it?

A. I do not know as that is true. Possibly that is so, but I always did distribute when they were willing to ship. I know that.

XQ. 517. I mean, they insisted that you should be the only one to distribute?

A. I had a contract. They could not do anything else. I would hold them to it.

XQ. 518. I am asking you whether that is a fact that they insisted that as a condition of their shipping salvarsan to the United States, you must do the distributing?

A. If I recall, there was a condition that the Red Cross should have a hand in distributing it, so it would not be exported; only for our own use here. I think that was the condition in 1915 or '16, Mr. Kresel. The records will show that.

XQ. 517. I show you a letter from Charles A. Holder, the foreign trade adviser of the State Department directed to you. Did you receive that?

A. I assume so. Let me read it.

XQ. 518. Page 779 of the Shortridge Committee report?

A. That is right. That is the letter with the Red Cross. That is right.

XQ. 519. Now I will read this letter to you. This is directed to you, Herman A. Metz:

> "German Government informs Department of willingness to permit first shipment of 150,000 ampules salvarsan subject to the following conditions: 'Distribution to be effected by American representatives of Farbwerke-Hoechst' "—

That was you?

A. Yes, that is right.

XQ. 520. "Under supervision of American Red

Cross and American Government, to guarantee safe arrival." That is correct?

A. Yes, sir; that is correct.

XQ. 521. Did you not cable the Farbwerke-Hoechst Company in February 9, 1916 as follows: "State Department informs me permit for export of 150,000 ampules subject to guarantee safe arrival and Red Cross supervision distribution. American Red Cross entirely unofficial body; supervision unnecessary and impossible. Will personally guarantee proper distribution. The permit now in Rotterdam; absolute guarantee of safe arrival. Spurious and infringing products simply flooding this market during delay. Inform American Embassy, Berlin."

Did you so cable?

A. Yes, if it is there I did.

XQ. 522. The American Red Cross had nothing to do with the distribution?

A. No.

XQ. 523. It did not?

A. The American Red Cross refused to have anything to do with it.

XQ. 524. So you did the distribution?

A. Naturally, I was the agent for it.

XQ. 525. You were the distributor?

A. Yes.

XQ. 526. What did you sell salvarsan at in August, 1914, before the European War broke out?

A. I think the best wholesale price was $2.50 to the wholesaler and about $3.50 to the physician. As I remember the figures, that is about what it was, in large quantities.

XQ. 527. You came here to testify as an expert on values. You must certainly have armed yourself with your figures. You cannot tell me without guessing what you were selling that product for just before the outbreak of the war?

A. I told you $2.50 to the wholesaler.

XQ. 528. And how much to the retailer?

A. The retailer, I don't know what he sold it for. He sold it to the physicians. I did not sell it to the physicians at that time, only to the wholesaler.

XQ. 529. In other words, your testimony is that prior to the outbreak of the European War in August, 1914, you never sold to physicians direct, you sold only to wholesalers?

A. Oh, I won't say that, Mr. Kresel. There might have been an odd lot that a man came in to get; but that was not the usual course of business.

XQ. 530. I will amend my question, then. You said you did not as a rule sell to physicians direct, you sold only to wholesalers?

A. Mostly to wholesalers.

XQ. And the price you charged wholesalers was $2.50?

A. Yes, sir.

XQ. 532. An ampule?

A. Six-tenths of a grain.

XQ. 533. What were you paying the Germans for it?

A. I was paying 10 marks less 40 per cent. The German price was 10 marks to the consumer. It is $2.40 approximately to the individual.

XQ. 534. You were paying 10 marks less 40 per cent.

A. 6 marks net, and paid duty on that and charges.

XQ. 535. Did you pay the duty?

A. Certainly.

XQ. 536. That is, you paid the duty in addition to the 6 marks?

A. Certainly, and the charges, the insurance and the expense.

XQ. 537. How much was the duty?

A. I think it was either 25 or 30 per cent at that

time. The record will show. I do not recall, under the tariff.

XQ. 538. 25 per cent?

A. 25 or 30 per cent.

XQ. 539. Ad valorem?

A. Yes, that was the duty, I am quite sure, 25 or 30.

XQ. 540. How much did an ampule cost you net after paying the duty and such other expenses as you have mentioned?

A. It cost me $1.50 plus 30 per cent., which would be about 50 cents, we will call it offhand. About $2, I should say.

XQ. 541. So you say now that you made a net profit of fifty cents on each ampule that you sold prior to August 1, 1914?

A. Approximately, yes, that is true. About 20 per cent of the selling price.

XQ. 542. In other words, after charging up all expenses, the cost of the product, your overhead, the duties, freight, insurance, everything that you can think of, it still left you a net profit of fifty cents an ampule?

A. With this proviso, that I believe at that time the overhead was charged back to the other side, that they allowed us for overhead and for advertising at that time. I think in 1914 they did that, or before 1914. Later on we paid it all ourselves.

XQ. 543. I want you to try and think a little more closely and tell me definitely whether prior to August 1, 1914, you had to pay the overhead here?

A. I cannot say that definitely. I paid part of it, I think, as I recall it. We charged some expense back to the other side. They had made us a certain allowance for advertising purposes.

XQ. 544. How much of an allowance?

A. That I do not recall exactly. My attention is

called to that by the fact that our expenses jumped suddenly in one year over a previous year. The books showed all that. The Custodian had all that when he examined my books.

MR. KRESEL: I ask that the statement that the books showed all that and that somebody, whose name I did not catch, examined the books, go out.

THE COURT: Let the answer be read and the part of it you object to be stricken out. Read the answer.

(Answer to XQ. 544 read as above recorded).

THE COURT: The last sentence, Mr. Kresel, was the one you wanted out, or what portion?

MR. KRESEL: I want out what he said about the Custodian examining his books.

THE COURT: Strike out that last statement.

XQ. 545. Between August 1, 1914, and April, 1915, during which you testified you were still getting some salvarsan from Germany, did you have to pay any more for that product to the Germans?

A. I think so. They raised it from time to time, ten per cent. at a time, I think.

XQ. 546. Your books are available?

A. The old books? I don't know. That was the Farbwerke-Hoechst at that time. That was—

XQ. 547. No, no, you have answered my question. You undertook to give us figures this morning—

A. I will give them to you.

XQ. 547. (Continued) Way back to 1913, do you remember?

A. I have got them right here.

XQ. 548. I want to see the books from which you got those figures.

A. All right.

XQ. 549. Will you produce them on Monday?

A. I think the ledgers are in town now.

XQ. 550. All right, those books will show whether

you had to pay more to the Germans for that product between August, 1914, and April, 1915, than you paid before August?

A. I know I did, whether the books show it or not.

XQ. 551. You do not mean to say that your books will not truthfully—

A. I do not.

XQ. 552. Let me finish my question, please.

A. Go ahead.

XQ. 553. You do not mean to say that your books will not truthfully reflect the situation?

A. I do not know whether those books, the ledgers, show that. The purchase books would and I have not those.

XQ. 554. You have some books that will show it?

A. I may have; I don't know.

XQ. 555. Those are the books I want to see.

A. I may have them. They are ten years old and I have not kept some of them, but some of them are in the files. But I know the facts.

XQ. 556. Where did you get the figures from that you quoted this morning in your testimony, wherein you showed what profits you had?

A. From my records, compiled from the books which I keep.

XQ. 557. How can you get your profits if you do not know your cost?

A. Because I kept them all the time, kept those records all the time.

XQ. 558. Those are the records I want.

A. All right, you can get those. They are on balance sheets and things of that sort.

XQ. 559. But I do not want the sheets, I want the books.

A. I have not got the books, but I have the sheets that I took from the books.

XQ. 560. We have it, then, that your books of account showing your transactions with the Germans between August, 1914, and April, 1915, are no longer in existence?

A. I won't say that. They may be; I do not know.

XQ. 561. Will you produce them on Monday?

A. I will try to have them here by Monday. I don't know, how can I get them here Monday. I can not get into the office Sunday and the office is closed today. I will have them here Tuesday. There is no physical way of getting them here Monday, Mr. Kresel.

XQ. 562. I am going to take your recollection until you produce the books, and I want your recollection as to how much more you had to pay the Germans for salvarsan after August, 1914, than you did pay prior to that date?

A. If I remember correctly it was 10 per cent. increase in price, with an increase in insurance and freight rates.

XQ. 563. You see, that does not tell me what I want to know. I want to know the amount of money.

A. I have to get that from the books, Mr. Kresel.

XQ. 564. Can't you tell me?

A. I do not keep with me a record of my books for thirteen years.

XQ. 565. Approximately?

A. No, I could not tell you within any amount. I can tell you by my records what the stuff cost at that time, and ten per cent could be added, and then you would have the figures.

XQ. 566. You said that the stuff cost you two dollars, approximately.

A. I got that right here.

XQ. 567. Then you add ten per cent and that would make it $2.20?

A. Yes, $2.20 later on.

XQ. 568. How much did you charge the War Department for salvarsan?

A. I think I charged them the cost price, $2.50, something of that kind, or $2.20, and offered them the plant when I started working it.

XQ. 569. Did you not charge them $4.50 an ampule?

A. I do not think I did, except possibly towards the end, when they had none at all and everybody paid that.

XQ. 570. You see, I did not ask you as to what the condition was; I asked you how much you charged the War Department. Now, did you not charge them $4.50?

A. I do not know, unless you give me the dates and the invoice. I will tell you then.

XQ. 571. Now I read to you a letter from W. C. Gorgas, Surgeon General of the United States, dated April 25, 1917—which you see was shortly after we went into the war.

A. What date?

XQ. 572. April 25, 1917. This will be found in the Congressional Record at page 4849, under date of July 9, 1917.

MR. ANDERSON: One moment, Mr. Kresel. Let me get that clear, will you? You mean in the Congressional Record of debates in Congress?

MR. KRESEL: Yes.

MR. ANDERSON: Have you got the record here?

MR. KRESEL: We probably have it. I have a photostat of it. Do you want me to produce the original?

MR. ANDERSON: No, the only thing is that I want to be sure where it is so that I can follow it.

MR. KRESEL: I am giving it to you.

MR. ANDERSON: You see, I have not got the Congressional Record.

MR. KRESEL: I will produce to you the original. I think we have it.

MR. ANDERSON: I am perfectly willing to take your photostat or a copy, but I wanted to get something that I could compare with myself, look at it.

MR. KRESEL: This letter is headed "War Department, Washington, April 25, 1917," and it is addressed to Honorable Henry W. Wilson, House of Representatives, Washington, D. C.

MR. ANDERSON: I do not think that would be admissible.

THE COURT: No, Colonel Anderson wants to know where in the Congressional Record he may find it, the proceedings of what date or what volume.

MR. KRESEL: I have given him the date, your Honor, July 9, 1917, page 4849 of the Congressional Record.

MR. ANDERSON: Then I would note the further objection, if your Honor please, that it does not appear that this letter was addressed to the witness or that he ever heard of it, and therefore the counsel can ask him any question as to any matter contained in the letter but I do not know quite on what principle the letter can be put into the record, and therefore I shall have to object to the letter going into the record as not being a matter with which this witness has any concern.

MR. KRESEL: I shall connect it, your Honor, with this witness, and if the Colonel wants me to ask him about it preliminarily, I will.

THE COURT: But I do not recall at the moment what your question is. Will you state it, please?

MR. KRESEL: I asked him how much he had charged the Government for this arsphenamine or whatever it was.

THE COURT: There having been an objection

by Colonel Anderson to the reading of the letter, at this stage of the inquiry I think the objection is well taken.

MR. ANDERSON: I make that objection because I have never seen the letter and therefore I could not consent to it going into the record.

MR. KRESEL: I am not offering it in the record. Perhaps Colonel Anderson misunderstands me. I do not think he would want to object to this. I am reading it to ask this witness whether that does not refresh his recollection as to the date when he charged the Government $4.50 for his property.

MR. ANDERSON: If counsel reads it, it necessarily goes into the record. I object to the letter being read into the record because, if the witness had written the letter or it was addressed to him, it would be a subject for refreshing his recollection, but a letter between General Gorgas and a member of a committee of Congress certainly has nothing to do with the recollection of this witness.

MR. KRESEL: I will offer it in a minute again. Let me ask him another question.

XQ. 573. You appeared before a committee of Congress which was headed by Honorable Henry W. Watson, that was considering the enactment of the Trading with the Enemy Act?

A. I did. The Trading with the Enemy Act?

XQ. 574. Yes.

A. I do not think Watson headed that.

XQ. 575. Then what was it?

A. Watson headed the Finance Committee on the tariff hearings.

XQ. 576. When?

A. You can go to the hearings of Congress. You have the records.

XQ. 577. 1917.

A. That was not Watson, to my knowledge, who was the Chairman of that meeting. I remember that committee. The Committee on Judiciary, I think it was, of the Senate.

XQ. 578. But you appeared before Mr. Watson's Committee, did you not?

A. I do not think Watson was Chairman of that Committee.

XQ. 579. Did you not write a letter to Mr. Watson?

A. I do not recall, unless you have it in the record. I wrote several on dyestuffs.

XQ. 580. You do not recall anything but what I show you here, do you?

A. I do. I recall everything that I know without your showing it to me.

XQ. 581. Do you not recall writing to Representative Watson protesting——

A. Oh, Representative Watson? I thought you said Senator Watson.

XQ. 582. I did not say Senator Watson; I purposely refrained from saying that. Now we will get it straight.

A. You mean Watson of Pennsylvania?

XQ. 583. That I am not aware of—where he comes from. Henry W. Watson, in the House of Representatives.

A. Not the Senate.

XQ. 584. You remember writing Watson?

A. Yes, I had a communication with him.

XQ. 585. You remember writing him in connection with these salvarsan patents?

A. Regarding a bill he had about the abrogation of the patents.

XQ. 586. You wrote him?

A. I did, sure.

XQ. 587. And you appeared before his committee, did you not?

A. I do not think so.

XQ. 588. Did you not testify before his committee?

A. I testified before the Senate Committee, not before the House Committee, as I remember it.

XQ. 589. But it was with reference to this legislation?

A. No, I appeared before the Senate Committee on the Alien Enemy Act. I do not believe the House had any hearing at that time.

XQ. 590. Do you not remember appearing before the Committee on Interstate and Foreign Commerce of the House of Representatives May 11, 1917?

A. I do not recall, but I would be glad to look at the record and see. I appeared so many times before Congress.

XQ. 591. And did you not address a letter to Honorable Charles Warren in the matter of the German patents (handing witness paper)?

A. I should not be at all surprised. I do not know that I appeared there, though. I do not know that I appeared. Let me see. (Examines paper). Yes, I recall that. Mr. Warren was in charge of the hearings on the Trading with the Enemy Act. I recall that.

XQ. 592. And did you not appear before the subcommittee of the Committee on Commerce of the Senate?

A. Yes, certainly, that is what I am talking about.

XQ. 593. With reference to this same legislation?

A. Yes, but not the House.

XQ. 594. At the time when Congress had under investigation the question of what to do with these German patents you were interested in the salvarsan patent?

A. Certainly.

XQ. 595. And do you not remember that you were questioned as to the price at which you were selling the product?

A. Yes, I would assume so, naturally.

XQ. 596. And do you not remember that it was made to appear there that you were charging the Army of the United States $4.50 an ampule for this?

A. I was charging everybody $4.50 after the war started, because of the increased cost of getting it. Everybody paid $4.50, the highest ever charged.

MR. KRESEL: I ask your Honor to strike out after the words "I charged everybody $4.50."

THE COURT: Let it be stricken out. Mr. Kresel does not want your reasons.

THE WITNESS: I beg your pardon.

THE COURT: If he does he will ask you for them. Just answer his question as directly as you can.

THE WITNESS: I will keep within bounds.

XQ. 597. You had access to these salvarsan patents from the day they were taken out, did you not?

A. Certainly. Every chemist had.

XQ. 598. You had?

A. I had.

XQ. 599. You could read them; they were in English?

A. Yes.

XQ. 600. You had a brother who was a chemist?

A. Yes.

XQ. 601. I assume a very good chemist?

A. Yes, I admit it.

XQ. 602. And he was in charge of your factory?

A. Yes.

XQ. 603. What is his name?

A. Gustav P., Ph.D.

XQ. 604. You sent him abroad in 1916, did yo not?

A. Yes, sir; early in 1916.

XQ. 605. You sent him abroad to the Farbwerke Hoechst Company at Hoechst am. Main to learn how to make salvarsan?

A. To see the process they were using so that w could manufacture it here; yes, sir.

XQ. 608. And he spent four months there, di he not?

A. About that.

XQ. 607. And when did he return?

A. About four months after he left. I think som time in May or June of the same year.

XQ. 608. May or June of 1917?

A. 1916.

XQ. 609. When did you first produce any salvar san here in the United States?

A. At the end of 1916 I should say.

XQ. 610. Not what you should say; I want t know exactly.

A. To the best of my knowldge at the end of 191 in the laboratory we produced it.

XQ. 611. I want to know the date when you firs produced any salvarsan in the United States.

A. I have no doubt at the end of 1916 we wer making sample lots right along and testing them out

MR. KRESEL: May I have that stricken out your Honor?

THE COURT: Yes.

MR. KRESEL: I am asking simply for a date.

THE COURT: Strike out the answer and the stenographer will read the question.

XQ. 612. (XQ. 611 repeated as recorded above)

A. I do not know the exact date.

THE COURT: Answer that as nearly as you can.

THE WITNESS: Towards the end of 1916 we had the product finished and ready for the market. I can not give the exact date, your Honor.

THE COURT: Is that what you want, Mr. Kresel?

MR. KRESEL: Yes, I will take that.

XQ. 613. Did you sell any salvarsan that you made in the United States, in 1916?

A. No, not until June, 1917.

XQ. 614. When did you first sell any salvarsan do not know offhand. Early in 1917.
that you made in the United States?

A. I can give you the records from my books. I

XQ. 615. Will you on Monday—

A. Not Monday.

XQ. 616. When you return here—please wait until I finish my question—be prepared to state from your books the date when you first sold any salvarsan that you made in the United States?

A. I can not on Monday, Mr. Kresel. I can not get the books. Tomorrow is Sunday and I do not know how to get at them. I will do it on Tuesday, if you will give until Tuesday.

XQ. 617. Before you sold or produced any salvarsan in the United States there was somebody else that produced it?

A. Yes, sir.

XQ. 618. Who was that?

A. That was the Dermatological Research Laboratories in Philadelphia, whose product I sold—bought and sold.

MR. KRESEL: I ask that the words "whose product I bought and sold" be stricken out.

THE COURT: It will be stricken out.

XQ. 619. When to your knowledge did the Dermatological Institute first produce and sell this product in the United States?

A. The latter part of 1915 or the beginning of 1916. The latter part of 1915, I should say.

XQ. 620. When you learned that they were producing this product did you not notify them that they were infringing your patents?

A. Probably—in 1915.

XQ. 621. Are you guessing at that?

A. No, I am quite sure I told them.

XQ. 622. All right, then please do not say probably. And did you not threaten them with prosecution for infringing your patent?

A. I do not think I did, no. I made an agreement with them by which I sold their product.

MR. KRESEL: I ask that everything after "I do not think I did" be stricken out.

THE COURT: He said no. Let that stay, but strike out the remainder.

XQ. 623. Did you not finally say to them that you will permit them to go on and manufacture the product only so long as you could not get it from Germany?

A. They agreed to do that.

THE COURT: Mr. Metz, you will have to answer those questions. I do not believe that you are intentionally evading.

THE WITNESS: I am not, your Honor.

THE COURT: No, I do not think you are.

THE WITNESS: I can not recall the exact conversations.

THE COURT: Let the answer be stricken out, and repeat the question.

XQ. 624. (XQ. 623 repeated as above recorded).

A. There was an agreement made to that effect.

THE COURT: Strike out the answer. You will have to answer that, Mr. Metz.

THE WITNESS: Well, I suppose I did, yes. Probably, yes.

THE COURT: Now, Mr. Metz, you are not supposing, understand.

THE WITNESS: Well, I did, then, your Honor—put it that way—because I got the agreement here.

THE COURT: Answer these questions as directly and specifically as you can, and I am going to watch your answers. Proceed, Mr. Kresel.

MR. KRESEL: I should like to proceed, your Honor, but I am anxious to catch a train at 3:30 if your Honor will so far indulge me.

THE COURT: The time is up, I did not realize it. We will adjourn court until Monday morning at 8:30 o'clock Standard time.

(Whereupon at 3:05 o'clock P. M. Standard time, adjournment was taken until Monday, June 25, 1923, at 8:30 o'clock A. M. Standard time.)

(CONTINUATION OF TESTIMONY ON JUNE 25, 1923)

HERMAN A. METZ resumes the stand.

CROSS-EXAMINATION.

By MR. KRESEL (Continued):

XQ. 625: You said, among other things on Saturday last, that while you were the sole agent for the distribution and sale of salvarsan prior to 1914 in the United States, some did come in not through you. What did you mean by that—smuggled in?

A. Not necessarily smuggled, but infringing; that is, dealers bought it and brought it in, sold it here, infringing the patent, infringing my rights.

XQ. 626. At all events, since the last shipment by the Deutschland in November, 1916, you have not imported any salvarsan?

A. Since when?

XQ. 627. November, 1916.

A. Oh, I have imported since the Armistice, yes, one or two lots.

XQ. 628. What year?

A. I presume in 1922 some came in. I am not certain. I would have to go to my records—1921 or 1922.

XQ. 629. And those you imported having obtained them from the manufacturer, the Farbwerke-Hoechst Company in Germany?

A. Those that we imported came from there direct under the condition of the Public Health Service.

XQ. 630. Have you been importing any dyes recently?

A. Yes, sir.

XQ. 631. You are importing considerable, are you not?

A. Not just now. We had all we could get orders for.

XQ. 632. When was the last importation that you received of dyes?

A. They are coming right along from unoccupied Germany.

XQ. 633. You are importing right now?

A. If I can get orders and they can be shipped, yes. I have orders there now.

XQ. 634. In 1919 were you importing any dyes or salvarsan?

A. 1919? No, that was—we probably were at peace; could not.

XQ. 635. At that time the importing business was dead, was it not?

A. Practically, except from Switzerland and other countries. From Germany it was dead.

XQ. 636. Prior to the outbreak of the European war there were six large dye factories in Germany, weren't there?

A. There were six plants known as "The Big Six." There were other plants, but there were six large ones. There were several smaller ones.

XQ. 637. You have always, when you have testified about them, called those the "Big Six"?

A. They were known as the Big Six.

XQ. 638. And those were the Badische, and the Bayer, and the Berlin; that was one group?

A. Yes, sir.

XQ. 639. And then there was another group of Hoechst and Cassella, and Kalle?

A. Yes, sir.

MR. ANDERSON: I simply want to make the statement on the record that if counsel takes the witness outside of the direct examination he makes him his own witness.

THE COURT: As I indicated on Saturday, I think any testimony with respect to the German dye or chemical industry is relevant to the question of value.

XQ. 640. And as you have stated, in 1916 there was a combination in Germany of these six and several others into what is known as the Interessen Gemeinschaft?

A. I have no personal knowledge of such fact, except through the matters in the record put there by Mr. Choate mainly. I have no personal knowledge of such matters—at that time.

XQ. 641. Have you now?

A. Yes, I have been over there and found out since 1920.

XQ. 642. That that is a fact?

A. That it is a fact today, the Interessen Gemeinschaft is a combination of all the plants, which includes The Big Six.

XQ. 643. The Big Six and others?

A. And smaller ones that they have acquired.

XQ. 644. And that the combination was formed in 1916?

A. I do not know the date. I know it was under German law and I do not know the date.

XQ. 645. Under the German law?

A. I assume so from the records that have been put before Congress.

XQ. 646. But even before that time, and while you were still the representative here of the Farbwerke-Hoechst Company, territory and amount of sales that you could make as the agent of your company were regulated and divided abroad between your company and the other members of the Cartel, isn't that right?

A. On one or two products.

MR. ANDERSON: I assume that it is not necessary for me to renew my objection this morning.

THE COURT: Not at all. The objection will be understood to be running through all these questions.

XQ. 647. And that was particularly true of sales of indigo, for instance?

A. Yes, sir.

XQ. 648. In other words, you here as the representative of the Farbwerke-Hoechst Company of Germany were not permitted, according to the arrangement between Farbwerke-Hoechst Company of Germany and the other members of the Cartel to sell any more than a certain proportion of indigo here in the United States?

A. That is not true.

MR. ANDERSON: I object.

MR. KRESEL: He has answered "no."

MR. ANDERSON: I want to say with regard to any arrangement between those parties, without waiving my objection, that the evidence of that

arrangement would be written; and I will have to object to any testimony of an oral character as to an arrangement between the corporations or as to their organization, consolidation, or otherwise.

THE COURT: I think that objection is not well taken. You may take the answer, and an exception may be noted.

XQ. 649. You said "no, sir."

A. I said "no, sir," there was no such restriction.

XQ. 650. What was the restriction.

A. The restriction, as I understood it, that they exchanged abroad and my firm was allowed a certain per centage of the total sales, and Mr. Poucher's firm, the Badische, the other—the other two-thirds, and the thing was regulated abroad.

XQ. 651. Wasn't it that if you made a certain amount of sales over and above the amount allowed that your German principals had to make an allowance therefor to the Badische?

A. Yes, sir, that is what I said. I was not restricted. I could sell the whole business if I could; had no influence upon me personally, or my company.

XQ. 652. And your return on the sales of indigo, as an example here, were either increased or diminished in accordance with whether you sold more or less than the amount agreed upon between your principal and the others?

A. Mine were not, because I claim—

XQ. 653. Whose were?

A. I do not know. I had a profit on all I made by an arrangement with abroad.

XQ. 654. Did you not deduct from your returns that you made to your principals abroad, an allowance for an excess of sales made by you here?

A. I got it back from them over there.

XQ. 655. You got it back from them?

A. Yes, sir; that was a sort of extra account, part of the extra account that is mentioned in the agreement.

XQ. 656. I will come to the extras.

A. All right; that is the way it was.

XQ. 657. These dye factories abroad, in addition to turning out dyes, also turned out pharmaceuticals?

A. Some of them. The Hoechst people did.

XQ. 658. Among such pharmaceuticals you have testified were salvarsan and novocain. How about luminal?

A. That was the Bayer preparation. I know that.

XQ. 659. That is a dye factory?

A. That is a dye factory.

XQ. 660. And how about aspirin?

A. That is being made here by the Bayer plant in Albany, of which I have no personal knowledge except from the market reports.

XQ. 661. Last Saturday you testified that the Dermatological Institute late in 1915 started manufacturing this product which you are selling under the name of salvarsan?

A. A product which was sold for the same purpose.

XQ. 662. And a product that was just as efficacious?

A. Was said to be. I have no knowledge as to that. It was so considered by physicians in general. It differed somewhat from salvarsan.

XQ. 663. And when they started to manufacture it, you testified that you told them they were infringing your patents?

A. Probably.

XQ. 664. And when you speak of your patents, you mean these patents covering salvarsan as to which you undertook to give an estimate of the value last Saturday?

A. I didn't say my patents. I said *the* patents; the same patents under which I was a beneficiary in this country.

XQ. 665. You were the beneficiary of the patents in this country?

A. Yes.

By Mr. Anderson:

Q. 666. May I ask whether that arrangement was in writing?

A. I was the general agent for all their product.

Q. 667. I mean the arrangement between you and the Dermatological?

A. Yes, it was a signed contract and that is in the record.

The Court: Is it your understanding, Colonel Anderson, that cross-examination is limited to the disclosure of facts in writing and that the witness can not be asked to orally testify?

Mr. Anderson: As to any facts which are in a written document, the rule of the best evidence is exactly the same on cross that it is on direct. It must be the best evidence. The witness can not answer a question of knowledge without putting in the best evidence, if objection is made to the secondary.

Mr. Kresel: I am not asking him for the contents of the document or what the arrangement was. I am simply asking him what he said to the other people.

The Court: My understanding of that rule differs from yours, Colonel Anderson. You may be right. But I think cross-examination is not so restricted and the objection is also overruled on the ground that the contents of those documents is not now called for. Exception noted.

By Mr. Kresel:

XQ. 668. After telling them that they were infringing the patents of which you were the beneficiary in the United States, you told them that you would not interfere with their manufacture of this product as long as you could not get a supply from Germany?

A. Certainly, for the benefit of the physicians.

XQ. 669. Certainly. Please do not go on. Then you got a supply from Germany by the Deutschland?

A. No, sir. None came on the Deutschland.

XQ. 670. Well, in some other way?

A. Yes, some other way.

XQ. 671. And when you got a supply from Germany, did you not demand that the Dermatological Institute cease manufacturing it?

A. Under the agreement, probably, yes.

Mr. Kresel: May I have that answer stricken out, sir?

The Court: Let the answer be stricken out and the stenographer will repeat the question.

(XQ. 671 repeated as above recorded).

A. I notified them that I had a supply.

The Court: Let the answer be stricken out and the stenographer repeat the question.

A. Yes, sir.

The Court: You remember the caution of Saturday, Mr. Metz?

The Witness: Yes, sir.

The Court: I am not going to caution you any more.

XQ. 672. Did you also demand from them damages and an accounting for infringing the patents?

A. I do not recall that. I would have to refresh my memory.

XQ. 673. And did you not call upon them to dismantle their factory so that they could not make any more of that product?

A. I do not recall that either.

XQ. 674. On the 5th day of December, 1916, you made a written agreement with the Dermatological Institute, did you not?

A. I have the date.

XQ. 675. Have you that agreement?

A. I have a printed copy of it.

XQ. 676. Well, you introduced a copy of it before the Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress. I now show you that copy beginning there (indicating) and ask you to state—

A. I want to get the date on this first.

XQ. 677. The date is on the following page, 5th day of December, 1916.

A. Is it the same one?

XQ. 678. Yes. Let me use my copy and you can follow me on your copy.

A. Yes, sir.

XQ. 679. I read from this agreement:

"Whereas Farbwerke, vormals Meister Lucius and Bruning, Hoechst on the Main (hereinafter designated for convenience and easy reference "The Foreign Corporation") is a foreign corporation duly organized and existing under the laws of Germany, Europe, and is the owner of, or the patentee, named in, certain patents of the United States, issued March 7, 1911, and November 11, 1913, and numbered 986,148 and 1,078,135, respectively, for a specific for syphilis, and process of making the same, which specific is known as diaminodioxyarsenobenzol, and when manufactured by or under instruction by The Foreign Corporation is known by the trade-mark 'Salvarsan' and '606' and 'Neosalvarsan;' and whereas Herman A. Metz"—that is yourself, is that right?

A. Yes, sir.

XQ. 680. "(hereinafter designated for convenience and easy reference 'Mr. Metz') is the President of Hoechst Company." Now, I will stop there. The Hoechst Company was the Farbwerke-Hoechst Company?

A. A New York corporation.

XQ. 681. "and represents that he is the sole owner of all of the capital stock issued by Hoechst Co. and that Hoechst Co. is a domestic corporation, duly organized and existing under the laws of the State of New York, and is solvent and has no indebtedness, and that The Foreign Corporation (that is the Farbwerke-Hoechst Company abroad) has assigned to Hoechst Company"—that is the New York corporation, is that right?

A. Yes, sir.

XQ. 682. "the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of The Foreign Corporation." Is that right? I want to stop there. That recital is true, is it not?

A. Yes, sir.

XQ. 683. The Farbwerke-Hoechst Company, a New York corporation, of which you were President, and all of whose stock you claimed to own, had therefore the sole and exclusive right of exploitation in the United States of America of salvarsan?

A. Yes, sir.

XQ. 684. And it continues to have that right to this very day?

A. Yes, sir.

XQ. 685. And this Hoechst Company was the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of

The Foreign Corporation; that was true when this contract was drawn?

A. Yes, sir.

XQ. 686. And is true to this day?

A. It is true as far as they control those products; yes.

XQ. 687. It was true in 1918?

A. Not after the seizure of the patents.

XQ. 688. It was true in 1918, was it not?

A. 1918, during the war?

XQ. 689. Yes?

A. All connections were broken at that time——

XQ. 690. I am not asking you about the legal construction. Did you and the Farbwerke-Hoechst Company abroad make any agreement in writing or otherwise which changed between you the status that you had occupied?

A. Not from 1914 on, after the World War started.

XQ. 691. That is all I ask.

A. Yes, sir.

XQ. 692. Now, you go on to recite in this agreement, "Whereas Mr. Metz and Hoechst Co. have requested The Laboratories"—that is the Dermatological Institute, is it not?

A. Yes, sir.

XQ. 693. "to discontinue the compounding and sale of arsenobenzol and to sell to their nominee about 12,000 ampules of arsenobenzol now held in stock by The Laboratories." That was true?

A. Yes, sir.

XQ. 694. In other words, on the 5th of December, 1916, you requested the Dermatological Institute to discontinue making that drug, and to sell whatever stock of it they had on hand?

A. Right; according to the agreement, yes. That was the arrangement arrived at.

XQ. 695. "And whereas," you say, "The Foreign Corporation and Hoechst Co. claim that the manufacture of arsenobenzol is an infringement of the said patents and other patents, recipes, and processes owned by them, and had demanded damages and an accounting of the profits arising from the sales of arsenobenzol, but which claim and the validity of which patents The Laboratories do not admit and which demand The Laboratories have refused." Was this true, that before making this agreement you did demand damages for infringement of the patents from The Laboratories?

A. Yes, sir.

XQ. 696. And I read on: "Whereas, at the request of Hoechst Co. and Mr. Metz, The Laboratories have dismantled that part of their laboratory which was constructed specially for the manufacture of arsenobenzol." Does that refresh your recollection as to your demanding that they dismantle their factory?

A. The matter was in agreement between their counsel and my counsel.

XQ. 697. Did you make that demand?

A. I would say yes, under the agreement, naturally, without anything specifically.

XQ. 698. I now read the paragraph marked 1, which says: "The Laboratories and Drs. Schamberg, Raiziss, and Kolmer shall not and will not, during the life, term, or non-suspension of said patents or either of them, either jointly, severally, individually, or directly or indirectly, except as hereinafter provided in paragraph 2, continue the compounding, preparation, or sale in the United States of America of arsenobenzol."

A. Yes, sir.

XQ. 699. That was the demand that you made upon the Dermatological Institute, namely, that they

must cease to make this product because your principal in Germany owned the patents and you were the beneficial owner thereof in the United States; is that true?

A. That is practically true, except as provided in paragraph 2.

XQ. 700. And then the exception. I am coming to that.

A. Thank you.

XQ. 701. The exception is contained in paragraph 2, and is as follows: "The Laboratories shall have the right to compound arsenobenzol for the purposes of experiments in Dr. Schamberg's laboratory, and also for use only on charity patients, without charge for medicine or service in the hospital clinic of Dr. Schamberg, as long as said Dr. Schamberg is in charge of said hospital clinic. But the provisions of this paragraph are limited to one laboratory and one hospital clinic at a time."

A. Yes, sir.

XQ. 702. In other words, as long as Dr. Schamberg was willing to treat poor people who could not pay, you were not going to interfere with him in making enough to supply the poor people, is that it?

A. I presume that was the intent of this paragraph; certainly.

XQ. 703. But you provided in this agreement, did you not, that you had the right to call on Dr. Schamberg and his laboratory to manufacture for your use any amount of this stuff that they could manufacture?

A. I think that was provided.

XQ. 704. And you were buying it from them at $1.20 per ampule, were you not?

A. In 50,000 ampule lots.

XQ. 705. I did not ask you in how many lots.

A. No, sir; $1.50 for the 06, which was the average size.

XQ. 706. Didn't you buy it at $1.20 for the four-ounce size?

A. For the 04, yes, the smaller size.

XQ. 707. And for the six-ounce you paid $1.50?

A. Not six-ounce; six-tenths of a gram.

XQ. 708. $1.50.

A. $1.50 I paid.

XQ. 709. And you were selling it at $4.50?

A. No, sir; I was selling it for $2.50 to the physicians in small quantities.

XQ. 710. $2.50?

A. In small quantities. I had to repack it and everything else.

XQ. 711. And wasn't the reason that you sold it only at $2.50 because Dr. Schamberg insisted——

A. No, sir.

XQ. 712. Wait a minute. ——insisted that the only condition upon which he would give you any of this stuff was that you would charge no more than $2.50?

A. I don't say that is so. I agreed to that price. That was quite ample to cover my expense and profit.

XQ. 713. Didn't Dr. Schamberg insist that you should place a maximum on the sales price at $2.50?

A. I probably agreed with him on that.

XQ. 714. What?

A. I probably agreed with him as to that.

XQ. 715. He asked you and you agreed with him?

A. I don't know. I may have made the suggestion myself.

XQ. 716. Did you volunteer it?

A. Possibly, yes.

XQ. 717. At all events that was an agreement between you?

A. It was an agreement, certainly, and was carried out.

XQ. 718. You say here that you were the sole

beneficiary in the United States of these patents and in the agreement you described yourself as having the sole and exclusive right of exploitation in the United States of America, as the sole licensee for the United States and Canada for salvarsan?

A. Where is that, Mr. Kresel?

XQ. 719. You will find it in the recital to the agreement that we have just been discussing. Would you like me to read it to you again?

A. I would like to be sure of the wording; that is all.

XQ. 720. Well, I will read it to you. Will you follow me?

A. Yes.

XQ. 721. The language is: "That The Foreign Corporation has assigned to Hoechst Co. the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan."

A. Yes, sir.

XQ. 722. That is what you say in the agreement?

A. Yes, sir.

XQ. 723. Did you get that sole license in writing?

A. Yes, I had it for years.

XQ. 724. Have you got it here?

A. I put it in the contracts, all up to the last one, which I haven't got a copy of with me.

XQ. 725. I do not know what contracts you are talking about.

A. The contracts with the people abroad.

XQ. 726. Show me in your contracts here what you are referring to.

A. I will take the original contract. That was always continued. 1902 is the original agreement. Here is one paragraph in the contract of 1902.

XQ. 727. Wait a minute, please, so that we will identify the instrument.

A. That is the original contract.

XQ. 728. You are reading from the instrument which is marked Defendant's Exhibit C for Identification. Now go on and give me the page, please.

A. On page 8.

XQ. 729. Now, go on.

A. (Reading.) "And the said Farbwerke agrees that if the said Metz faithfully performs his obligations under this agreement, the said H. A. Metz & Co.,"—this covered dyestuffs and the same holds good for chemical and other products.

XQ. 730. I did not ask you about dyestuffs. I am talking about salvarsan.

A. That is all their products.

XQ. 731. If that refers to salvarsan, of course, you will read it.

A. Salvarsan was not made in 1902. My agreement is to handle their products. That continued to date, practically.

XQ. 732. Is there anything in that portion of the agreement that you want to read about salvarsan?

A. No specific reference. Their products are mentioned.

XQ. 733. Please tell me what you have in writing——

A. A contract.

XQ. 734. Wait until I finish. ——on which you base the claim in this agreement with Dr. Schamberg that you had the exclusive license in the United States for salvarsan?

A. I had no specific—I had a contract for all their products in the United States, everything they made.

XQ. 735. I will broaden my question. I will let you read anything that you have in any agreement,

which you say sustains that claim. Now go on and read anything that you want.

A. (Reading.) "For the term of five years from said January 1st, 1903, shall have the exclusive sale of the products of the said Farbwerke in the United States of America; and the said Farbwerke during the said term, will not directly or indirectly sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained." That was continued in each contract, as a renewal of the contract from the original contract of 1902.

XQ. 736. What is the date of the last contract you had with your principals?

A. The last was some time in 1913.

XQ. 737. Which you say you have not here?

A. Which is probably in the Court records in New York.

XQ. 738. You haven't it here?

A. No, I haven't it here.

XQ. 739. You had the contract of 1912 here?

A. I have all the previous ones here.

XQ. 740. Look at the 1912 contract and read me what there is there about it?

A. Here is a paragraph in here.

XQ. 741. Page what?

A. Page No. 11.

XQ. 742. What is the number of the exhibit?

A. It is the agreement of 1912; 22nd day of July, 1912 (Defendant's Exhibit F for Identification), paragraph 11.

XQ. 743. Go on.

A. (Reading.) "And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains President and General

Manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America; and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained," and so forth.

"And during the said period it will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not, directly or indirectly, sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co."

XQ. 744. Is that all you want to read?

A. (Reading.) "This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the 'lowest market price' above referred to, which 'lowest market price' means the general and ordinary lowest market price."

XQ. 745. Now, is that all?

A. Well, that is the agreement I had with them; that I had the sole right to sell all their products.

XQ. 746. Now please put the contract away if you are through with it.

A. Here is the pharmaceutical end, if you want that.

XQ. 747. I want you to read whatever you want to read in answer to that question.

A. Well, the question was, did I have the exclusive rights to the sale of their goods in this country.

XQ. 748. You misunderstood the question then.

A. What is the question?

XQ. 749. I will read it to you again. Were you, as you recited in this agreement with Mr. Schamberg, the sole licensee for the United States and Canada for salvarsan?

A. Yes, including their other products; sole licensee.

XQ. 750. Or were you simply an exclusive agent to sell that product? Now, which was it?

A. I had the license to sell under the agreement and was the exclusive agent, both. Nobody else had a right to sell it. I think that answers the question.

XQ. 751. You claim to have had a license, do you?

A. Will you define "license?"

XQ. 752. I would like you to do that. You were the one who made this agreement, were you not?

A. The counsel; my counsel and his counsel.

XQ. 753. Did you have a license or didn't you?

A. I had an agreement to sell, which is a license to sell, certainly.

XQ. 754. Did you have a license to make?

A. Not at that time. In 1916—yes, I had a license to make in 1916. 1916, yes.

XQ. 755. When did you get that?

A. I got that when my brother went to Europe in January to May, in 1916.

XQ. 756. And you had the exclusive license to manufacture in the United States, did you?

A. I had their permission under the patent to work those——

XQ. 757. Answer my question. Did you have an exclusive license to manufacture salvarsan in the United States?

A. Nobody else had to my knowledge.

XQ. 758. And that is what you were referring to in this recital that I have read to you?

A. Undoubtedly.

XQ. 759. Was that license in writing?

A. That license was in writing in Europe.

XQ. 760. Have you the writing?

A. No. I can explain why, if you will let me.

XQ. 761. And you say it was made when?

A. Early in 1916, while my brother was in Europe.

XQ. 762. And was it to be for the life of the patent?

A. There was no stipulation. I was allowed to make salvarsan for use in this country.

XQ. 763. Was it for the life of the patent?

A. I so assume.

XQ. 764. You understood that to be so?

A. I understood they could stop me if they wanted to later on, but I had a license to make it and did make it.

XQ. 765. I do not want your assumptions. Did you not claim to have the exclusive license for the life of the salvarsan patent to manufacture the product in the United States?

A. I do not know as I claim the life of the patent.

XQ. 766. How long did you claim?

A. It did not occur to me. I had a right to make it; that is all.

XQ. 767. Exclusive right?

A. The exclusive right from the patentees.

XQ. 768. You had that right in 1916, did you not?

A. Yes, sir.

XQ. 769. And in 1917?

A. Yes, sir.

XQ. 770. And in 1918?

A. Yes, sir.

XQ. 771. And in 1919?

A. Yes, sir.

XQ. 772. And in 1920?

A. Yes, sir.

XQ. 773. And up to this very day?

A. Up to date. And I am still doing it.

XQ. 774. And so when the Alien Property Custodian sold this patent to The Chemical Foundation, it was subject to that exclusive license of yours, was it not?

A. I so assume.

XQ. 775. You not only claimed that you had the exclusive license to manufacture salvarsan here, but you claimed that you owned the patents, did you not?

A. No, sir; I did not.

XQ. 776. Never?

A. I owned the trade-marks, not the patents.

XQ. 777. Did you never claim you owned the patents?

A. Never claimed I owned the patents. If I did, I was mistaken and didn't know what that meant.

XQ. 778. Well, you would not have made a mistake like that, would you, Colonel Metz?

A. I do not assume so.

XQ. 779. No, of course not.

A. The trade-marks I owned.

XQ. 780. So that, as you sit there, you do not recall any occasion when you ever made the claim that you owned the patents?

A. I do not recall such a claim. If I did, it was a mistake.

XQ. 781. I show you a letter to Dr. Sidney R. Miller dated May 9th, 1918, addressed to Sidney R. Miller, 11 East Chase Street, Baltimore, Maryland, signed by you. I just want to know whether you wrote it? Is that your signature?

A. It looks like it. It is a photostat of what may be my signature.

XQ. 782. I will read to you from this letter: "In

the meantime, Dr. Schamberg here had begun to place his articles on the market. After conference with him I agreed on humanitarian grounds not to interfere with his product if I had all the patent rights and powers to sue and recover from him." Did you write that?

A. I had power to——

XQ. 783. Did you write that?

A. I did, yes, undoubtedly, and had the right.

XQ. 784. That is, you had all the patent rights, did you?

A. To sue and recover.

XQ. 785. Did you have all the patent rights?

A. No, but I had a power of attorney to sue and recover.

XQ. 786. You say you had a power of attorney?

A. Yes, sir, to sue.

XQ. 787. Is that what you mean by saying that you had all the patent rights and powers to sue and recover?

A. Yes, sir, that is what I meant, exactly.

XQ. 788. Where is your power of attorney?

A. It is in the file. I had a suit in Detroit, and it is in the record.

XQ. 789. Where is it? I do not care anything about your suit.

A. I do not have it here. It is in the record.

XQ. 790. What record?

A. One of the Congressional hearings.

XQ. 791. Well, find it during the lunch hour.

A. Yes, I will try to find it, if it is here. If not, I will endeavor to have a copy.

XQ. 792. Now, I have read that to you. Does it refresh your recollection that there were other occasions when you claimed to own the patents?

A. I sued on one occasion.

XQ. 793. What?

A. I sued on one occasion.

XQ. 794. I did not ask you about that?

A. Well, that is an occasion.

XQ. 795. You mean you brought a suit as owner of the patent?

A. No, as attorney to bring under the patent—to sue under the patent, to stop importation from Canada.

XQ. 796. You brought a suit, anyway?

A. Yes, sir, my attorneys did.

XQ. 797. Where was the suit brought?

A. Detroit, as I recall.

XQ. 798. When?

A. I do not recall the date; some time——

XQ. 799. What is the name of the party whom you sued?

A. I think it was A. C. Smith. It is all in the record. You can find it.

XQ. 800. "A. C. Smith?"

A. I think it was; in Canada, who sent goods to this country, to Detroit.

XQ. 801. Whatever rights you had or claimed, you have had up to this very day, have you not?

A. I assume so, yes, sir, certainly.

XQ. 802. And had them in 1919?

A. Yes, sir.

XQ. 803. And these are substantial claims by you, are they not?

A. What do you mean "substantial claims?"

XQ. 804. That is English, is it not?

A. The claims——

XQ. 805. Don't you understand the word "substantial?"

A. Yes, but in that connection is it substantial?

XQ. 806. They are not trumped up by you, are they?

A. No, sir, if that is what you mean.

XQ. 807. So anybody that bought these patents bought them subject to your claims, didn't they?

A. To allow me to continue, certainly.

XQ. 808. Didn't they?

A. Yes, certainly.

XQ. 808 (continued). Subject to whatever claims you had. Now, weren't there other occasions when you claimed to own these patents. Think, now.

A. I do not recall until we entered the war what claims I made. After that I made no claims.

XQ. 809. You may have made them, without knowing?

A. No. I could refresh my memory. I have got records, undoubtedly—may have.

MR. ANDERSON: I do not care to interrupt the examination here, but the witness has expressly said that all he claimed to have was a right to sue in order to protect his rights under those patents; but counsel has, I think, inadvertently said a number of times that the witness claimed to own the patents. The witness has expressly stated he did not make any such claim.

THE COURT: What is your specific objection?

MR. ANDERSON: My objection was to the form of the question, in which he recited the evidence of the witness incorrectly. He has put upon the record a statement as coming from the witness which the witness's evidence does not support, and I am objecting to the form of framing the question.

MR. KRESEL: Do you want to strike out the answer, Colonel?

MR. ANDERSON: With that statement on the record, I would not go back to strike the question out.

MR. KRESEL: All right, let us leave it.

MR. ANDERSON: That will be all right.

XQ. 810. Do you now say, Colonel, that you did not own these patents?

A. I never owned the patents.

XQ. 811. Did you ever have any interest in them whatsoever except such as you have now disclosed?

A. None, except the right to manufacture under them, and to handle——

XQ. 812. The exclusive right?

A. The exclusive right from the people abroad.

XQ. 813. Did you not have an agreement with the Germans who owned the patents that they should convey them to you?

A. No, sir, I tried to get them, but did not——

XQ. 814. Didn't you have such an agreement? You said, "No, sir," didn't you?

A. No, sir, I did not have.

XQ. 815. You appeared as a witness before the sub-committee of the Committee on Commerce of the Sixty-fifth Congress and there testified, and I shall read a portion of your testimony.

MR. ANDERSON: At what time?

MR. KRESEL: Do you mean the date?

MR. ANDERSON: Can you give it to me?

MR. KRESEL: October, 1917.

XQ. 815 (continued). I read to you the following: "I went over to Germany toward the end of 1914 and the beginning of 1915 and took up this question of transferring the patents. They had to consult with Professor Ehrlich and others. It was finally agreed that the patents should be transferred so that I could hold them." Is that true?

A. There was such an understanding——

XQ. 816. Is that true?

A. That is true, yes.

XQ. 817. And that agreement was made at the end of 1914 or at the beginning of 1915, was it?

A. At the end of 1914 when I was over there after

the war started. It was a verbal agreement, to be carried out later on.

MR. KRESEL: May I, if your Honor please, have this witness not volunteer statements? I ask to strike out everything after "The end of 1914" as not responsive.

THE COURT: Read the question, please.

(XQ. 817 repeated as above recorded.)

THE COURT: What portion do you want stricken out, Mr. Kresel?

MR. KRESEL: The part in which he says that it was a verbal agreement to be carried out later on.

THE COURT: Let it be stricken out.

XQ. 818. You said on the same occasion: "I had our attorney some years before bring one suit against the infringer who bought the genuine German product and sold it in this country from Canada. I sued and enforced my sole rights in the patents against him." Is that true?

A. It should be "under the patents" instead of "in."

XQ. 819. Is that true?

A. I suppose I said that, yes. I said that undoubtedly.

XQ. 820. So you said before Congress that you had the sole rights in the patents, did you?

A. Under the patents is what I meant, no matter what I said.

XQ. 821. You testified before this committee also as follows: "After I got back from Europe I sent my brother over early in 1916, who is a trained chemist, for the patents, to have them finally transferred." Is that true?

A. Yes, sir; I intended to have it transferred.

XQ. 822. With your recollection now refreshed, do you recall any other occasion when you made the

claim that you had the sole rights in the patents or that you owned them?

A. I never claimed to own the patents. I had the sole rights under them at all times. I made no secret of it but asserted it very often.

XQ. 823. And you made no secret of your claim to the sole rights in these patents, did you?

A. I had no rights in the patents. I had them under the patents, Mr. Kresel.

XQ. 824. The sole rights under the patents?

A. Yes, sir.

XQ. 825. When did you start to try to make salvarsan in the United States?

A. As soon as my brother got back from Europe with the data as to machines, and so forth.

XQ. 826. Well, when; in January, 1916?

A. Yes.

XQ. 827. You say he stayed there four months?

A. Approximately.

XQ. 828. That would bring it to May, 1916?

A. Approximately.

XQ. 829. So as soon as he returned you started to try to produce the product?

A. I started to install a plant, to buy machinery.

XQ. 830. Well, that was a preliminary step, of course.

A. Certainly; necessary to any production.

XQ. 831. When did you first produce salvarsan in the United States on a commercial basis?

A. I told you Saturday that I do not remember the exact date. I am having it looked up, when I first sold it. It was made in 1916. I will try to have the information for you later on.

XQ. 832. In what year?

A. The end of 1916. We made some in 1916, undoubtedly.

XQ. 833. When did you have it ready for the market?

A. I think early in 1917.

XQ. 834. Early in 1917?

A. I think so. I am getting the exact dates for you from New York. You requested that on Saturday and I am having that looked up.

XQ. 835. I show you a letter that you sent to Honorable Charles Warren, Assistant Attorney General, Department of Justice, under date of May 11, 1917 (handing witness). Did you send that?

A. I recall such a letter, yes. I assume this is a copy.

XQ. 836. I read from that letter, which is dated May 11, 1917, the following: "I have received from the German owners of these patents verbal permission to manufacture these products in this country and full information relative to the processes of manufacture; that I have the factory and machinery for such purpose and will be able to supply the market within the next month or two."

A. I so thought at that time.

XQ. 837. So in May, 1917, you thought you would be ready to supply the market either in June or July, 1917?

A. Yes, sir.

XQ. 838. That was more than a year after you started in to try to produce?

A. It took us months to get the machinery.

XQ. 839. It was a year after you started in to try to produce?

A. No, the year after I started to build the plant.

XQ. 840. All right, have it that way. Is it not a fact that you did not start to produce until June, 1918?

A. I must refresh my memory on that, Mr. Kresel. I am doing that. I am having these dates looked up in New York.

XQ. 841. Is it not a fact that during the last six months of 1918 you lost $38,000 in trying to make salvarsan?

A. I presume my records show that. I have got such a statement. Not in trying to make salvarsan.

XQ. 842. Listen, Mr. Metz, or Colonel Metz, I asked you a question.

A. Yes, sir.

XQ. 843. Is it the fact that during the last six months of 1918 in trying to make salvarsan you lost $38,000 on the transaction?

A. I did not try. I sold salvarsan for less than the cost of production, that is what it means, and at an agreed price with the Government. That is why I lost the money.

XQ. 844. Did you lose $38,000?

A. My records, I think show it. An examination of my books shows it—in one concern. I have those figures somewhere.

XQ. 845. And in 1918 your production of salvarsan was no good, was it?

A. Oh, no, I beg your pardon. It was as good as anybody else's, that went into the Government market. It passed the Government test or would not have gone into the market.

XQ. 846. Do you not remember the attack made on you by Dr. Sargent because when he used your stuff on five patients he almost lost them, they almost died?

A. I know they didn't know how to use it and had lots of deaths because they could not use the product.

XQ. 847. Do you not remember that article was printed in the Medical Journal and that you got your lawyers to write a letter to Dr. Sargent that you would hold him responsible for damages?

A. Yes, sir, because the same article was used elsewhere and proved satisfactory.

XQ. 848. And is it not a fact that as late as June, 1918, you did not know how to produce salvarsan?

A. I beg your pardon, I did know as well as anybody else.

XQ. 849. Is it not a fact that you got Dr. Schamberg to come and show you how to make it?

A. I did not. Dr. Stieglitz suggested it and we never got together.

XQ. 850. Did you not sign an agreement with Dr. Schamberg in June, 1918, to come and show you how to make salvarsan?

A. Dr. Stieglitz prepared some such agreement in the interest of the consumers of the country to get together and make a satisfactory product that was alike all around.

MR. KRESEL: I ask that the answer be stricken out.

THE COURT: The answer will be stricken out and the question repeated.

XQ. 851. (XQ. 850 read as recorded above). Just say yes or no, please.

A. I do not recall signing it. I remember such an agreement.

XQ. 852. Now let me show you a copy of it.

A. It was never carried out.

XQ. 853. I ask you do you recognize your signature on it (handing witness)?

A. Certainly, I am willing to do anything at all to satisfy you.

XQ. 854. Is that your signature?

A. Let me see it. Yes, that is my signature—a copy of it.

XQ. 855. Now I will read to you from this agreement.

MR. ANDERSON: Will you have it identified, Mr. Kresel?

MR KRESEL: Yes I will just mark it for identification.

Same marked "Defendant's Exhibit G, for Identification."

XQ. 854. (continued) "The Dermatological Research Laboratories through Doctors Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agreed to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay, in such a way however, that the manufacturing of arsphenamine of the Dermatological Research Laboratories shall not be crippled or interfered with. To accomplish this, Dr. Raiziss will, without delay, arrange his management of the manufacturing plant in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratories." That was the agreement you signed?

A. What was the date of that?

XQ. 855. June 8, 1918.

A. And what was the Sargent letter?

XQ. 856. I will answer questions when you are through answering them. I read further from this agreement.

THE COURT: Was the question answered?

MR. KRESEL: Yes, sir.

XQ. 856. (continued) "In return for this valuable assistance, rendered by the Dermatological Research Laboratories, Mr. Metz will agree for himself, that the companies in which he is interested and his assignees: (a) In the event that the Treaty of Peace should for any cause nullify the license of the Dermatological Laboratories to manufacture arsphenamine as at pres-

ent, these laboratories under the trusteeship of Doctors Schamberg, Kolmer and Raiziss or their successors, will be permitted to continue to manufacture and sell arsphenamine to the extent of a minimum of 3,000 ampules of 0.6 grams per week and not to exceed 10,000 tubes per week or 10 per cent of the needs of the country in arsphenamine, (or its derivatives), in case Mr. Metz or any of his companies or assignees should have control of the German rights in any way after the Treaty of Peace has been signed."

A. Yes, sir; perfectly true.

XQ. 857. That was your agreement?

A. Yes, sir; my position exactly.

XQ. 858. And then you agreed: (b) In the event that the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war or in the event that Mr. Metz is not in the position to guarantee to the Dermatological Research Laboratories the right to manufacture arsphenamine after the war to the extent indicated in paragraph a, Mr. Metz and his Laboratories for the valuable services received will pay the Dermatological Research Laboratories a royalty on the manufacture of salvarsan under license from the Federal Trade Commission for the duration of the war."

A. Yes, sir.

AFTER RECESS.

XQ. 859. Mr. Metz, I was asking, when we adjourned for recess, about this agreement of Dr. Schamberg or the Dermatological Laboratories, dated June 8, 1918, and in connection with that you asked me if I could give you the date of the letter from Dr. Sargent. You remember that?

A. Yes, sir.

XQ. 860. I show you now a copy of Dr. Sargent's

letter as it was printed in the Journal of the American Medical Association under date of March 30, 1918. So you will see that that letter of Dr. Sargent's preceded the agreement of June 8, 1918?

A. That shows it.

XQ. 861. So we have it now, Mr. Metz, that as late as June 8, 1918 your product, salvarsan, was not up to the standard demanded by the Government?

A. I don't admit that, sir. The Government passed it before it was sold.

XQ. 862. I read to you from the agreement: "The Dermatological Research Laboratories, through Dr. Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agree to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay."

A. That does not follow. It was passing the Government's standards.

XQ. 863. You mean to say that you signed this agreement with that statement in it, and that that was not true?

A. That was not true. We were passing the Government's requirements.

XQ. 864. You signed this agreement and that was not true?

A. That is not true. I signed the agreement, and the fact is we did pass the Government standards.

XQ. 865. You signed the agreement notwithstanding that what I have just read was not true, is that it?

A. I signed the agreement. It was not true. It was up to Government standards. I signed it to help to get these things—

XQ. 866. I am simply asking one question at a time. I say that you signed this agreement with the statement in it that I have read, and yet that that statement was then untrue; is that what you say?

A. I can not say it was untrue. I said we did pass the Government's standards, despite that statement, and I signed that statement, if that is what you want.

XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?

A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.

XQ. 868. Did you ask Dr. Schamberg to help you improve your product?

A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement.

XQ. 869. Well, your product needed improvement?

A. They said so. I did not think so. The Government test did not show it.

XQ. 870. And in return for these valuable services you agreed to pay them a royalty?

A. If they were earning it, yes.

XQ. 871. And that was June, 1918, more than two and a half years after your brother had gone abroad and had spent four months through the German factory learning how to make salvarsan, was it not?

A. The dates are there, yes. The questions were raised.

XQ. 872. And for all this time and for years prior thereto you had before you and open to you the patent on salvarsan?

A. And were working and putting out marketable goods.

MR. KRESEL: I ask that "were working and putting out marketable goods" be stricken out.

THE COURT: The motion is granted.

XQ. 873. After we went into the war I think you testified upon your direct that the Federal Trade Commission issued four licenses to manufacturers to make salvarsan?

A. Yes.

XQ. 874. You knew that such licenses were being granted by the Federal Trade Commission, did you not?

A. Naturally.

XQ. 875. You knew that the Massachusetts State Department of Health was asking for a license to manufacture salvarsan, did you not?

A. I had been informed they were doing it for their own hospitals. I did not know about the license.

XQ. 876. Did you know they were asking for a license?

A. Possibly. I cannot say definitely.

XQ. 877. Did you know that the New York State Board of Health was asking for a license from the Federal Trade Commission?

A. I knew later on that they had a license for manufacturing, yes.

XQ. 878. And did you not protest against the Federal Trade Commission issuing licenses to these State Boards of Health?

A. As a matter of fact, I protested against all licenses.

XQ. 879. Did you or did you not?

A. I did, against all licenses.

XQ. 880. I show you a letter from yourself to Dr. G. W. McCoy, Director of Hygienic Laboratory, Public Health Service, Washington, D. C. Did you write that letter to him (handing witness)?

A. Yes, sir.

XQ. 881. That letter is dated March 14, 1919, and appears at page 839 on the Hearings on Resolution

No. 77. You say in that letter: "My dear Dr. McCoy: I wrote to the Federal Trade Commission today in regard to the application of the Massachusetts State Department of Health for licenses. I also protested against a license being granted to the New York State Board of Health. I feel in doing this I am justified in the position I take and I would like to hear from you whether you favor the various State Boards making their own product or not. Personally my experience with the New York City Board of Health when I was Controller satisfied me that it was a very unfair competition against private enterprise."

A. Yes, sir.

XQ. 882. That was your humanitarian point of view?

A. That was my commercial and humanitarian.

XQ. 883. Was it?

A. Yes, sir. I did not think it was fair to private individuals.

XQ. 884. In other words, you objected to the Federal Trade Commission giving a license to the State of Massachusetts and the State of New York to manufacture their own salvarsan?

A. To anything in competition with private enterprise; yes, sir.

XQ. 885. Up to the time of the war you had a monopoly of salvarsan in the United States?

A. Yes, sir.

XQ. 886. And up to the time of the war you were selling to physicians, you told us—no, you were selling it at wholesale at $2.50 a dose?

A. Yes, sir.

XQ. 887. And during the war you raised the price to $4.50 a dose?

A. To physicians direct, in small lots.

XQ. 888. And to the Government?

A. No, I do not recall that. I sold to the Government for $1.17.

XQ. 889. Didn't you charge the Government $4.50 in 1915?

A. You have made that claim and I have got to verify it. I do not know; I took your word for it.

XQ. 889-a. You testified to that last Saturday. Do you want to take it back?

A. I will want to qualify it after I look at my record. You may have said the imported stuff. I will tell you why I did it if you want to know.

XQ. 890. I do not want to know why did you it. So that when you had the monopoly, you were charging $2.50 wholesale, and until you satisfy the Court that you were wrong on Saturday, I will take it that your testimony stands that you were charging $4.50 during the war?

A. I did to physicians. I admit that.

XQ. 891. You admit charging that to the physicians?

A. Direct to the physicians.

XQ. 892. Since the war and since the Federal Trade Commission issued licenses for the manufacture of this product and since The Chemical Foundation have issued licenses on this product, what is it selling at now?

A. I sold to the Government at $1.00 when I started making it.

XQ. 893. What is it selling at now?

A. I made a bid last Monday to the Government, thirteen cents a dose for its requisitions. That is the cost price.

XQ. 894. Thirteen cents a dose; and what are you selling it to physicians at?

A. I do not recall without going to my records.

XQ. 895. Sixty cents a dose, isn't it?

A. Possibly in single packages. We are required to go to a different expenditure than with the Government's stuff.

XQ. 896. And there is keen competition in the market now, is there not?

A. Yes, sir.

XQ. 897. You no longer have the monopoly, have you?

A. No, sir.

XQ. 898. And there is no monopoly in the product of salvarsan, is there?

A. No, sir. I should say no in the sense that monopoly is a control.

XQ. 899. What was that last? I did not get it.

A. In the sense that monopoly is a control.

XQ. 900. I do not want to know your sense. You understand the word "monopoly." I asked you whether to your knowledge there is a monopoly in the market of the supply of salvarsan?

MR. ANDERSON: If counsel will permit me, I do not think the question asked for anything but a conclusion. What is a monopoly is a conclusion of law founded on facts.

THE COURT: This witness has found no difficulty, Colonel Anderson, in testifying about a monopoly in previous answers. I shall assume that he knows the meaning of "monopoly" as embodied in that sentence. The objection is overruled.

MR. ANDERSON: Exception.

XQ. 901. Is there, Colonel Metz?

A. In the ordinary sense of monopoly, no.

XQ. 902. Did you testify before the Shortridge Committee as follows; I read from page 818. The Chairman said to you:

"Is there any other company manufacturing the same article?"

You said:

"Oh, yes. The Federal Trade Commission licensed four manufacturers, and Mr. Garvan, or The Chemical Foundation, I think, licensed, I think, four or five others, but of those he licensed, I think only one is producing, in a liquid form.

"THE CHAIRMAN: Is there any combination between you and other manufacturers of salvarsan?

"MR. METZ: No, sir; no combination of any kind."

That was true?

A. Yes, sir.

XQ. 903. And is it true today?

A. As far as I know, yes. None that I am interested in.

XQ. 904. At page 869, the Chairman asked you:

"Is there any monopolistic arrangement between you and any other concerns?

"MR. METZ: No, sir; not even an understanding.

"THE CHAIRMAN: Do you know of any combination?

"MR. METZ: Not at the present time.

"THE CHAIRMAN: Do you know of any combination at all now or in the past?

"MR. METZ: Not in these things I am talking about."

Was that true?

A. Yes, sir; absolutely.

XQ. 905. And is it true now?

A. Yes, sir; so far as I know.

XQ. 906. And is it not the fact that the American product salvarsan is as good as the German ever was, and better?

A. It is so conceded by the Government testers and by physicians that are using it.

XQ. 907. Now, coming to the dye industry, Mr.

Metz, you have told us that before August, 1914, there were in this country no factories producing dyes, but that there were, I think you said, six assembling plants?

A. They were called assembling. They were dye-producing plants; but they were practically assembling dyes. That is the term used in the reports of Mr. Choate or anybody else.

XQ. 908. Since the war and since these patents were seized—I mean the German patents covering dyes that are here in question—and since The Chemical Foundation has been operating, has the number of producers of dyes in this country increased or decreased?

A. It has increased, but not because of the patent.

XQ. 909. I did not ask you——

A. I beg your pardon.

MR. KRESEL: May I ask that that be stricken out after "it has increased?"

THE COURT: Let it be stricken out.

XQ. 910. And can you tell us how many manufacturers there are today in this country producing dyes?

A. No, sir.

XQ. 911. Can you give us an approximate number?

A. No, sir.

XQ. 912. Are there as many as 160?

A. I should not say there were that many producing, no, sir. They claim to be, but they are not producing dyes, really.

XQ. 913. Are there as many as a hundred?

A. I should say no; emphatically no.

XQ. 914. Are there more than six?

A. Oh, yes.

XQ. 915. Well, you are one of the producers——

A. (interrupting). I am two of them.

XQ. 916. ——aren't you? What?

A. I am two of them.

XQ. 917. You have taken out licenses from The Chemical Foundation, haven't you?

A. Not for colors. I took from the Federal Trade Commission for colors, one of my plants.

XQ. 918. So you hold no licenses covering dyes from The Chemical Foundation?

A. No, sir. Oh, for importation, yes; not for manufacturing.

XQ. 919. You notice I did not restrict my question to manufacturing, did I?

A. Well, we were talking of manufacturing, Mr. Kresel. Pardon me if I did not cover the full ground. We pay licenses when we import patented colors, as they come in.

XQ. 920. And is it not a fact that today the American chemical industry is producing 90 per cent of the United States dyes in that way?

A. Undoubtedly; of the unpatented products.

MR. KRESEL: May the last part be stricken out—"of the unpatented products?"

THE COURT: Let it be stricken out.

THE WITNESS: I beg your pardon, your Honor.

XQ. 921. And the dyes that are being produced by American manufacturers are as good as the German ever were?

A. Many of them, yes.

XQ. 922. And we are no longer dependent upon Germany for our dyestuffs, are we?

A. Thank God, no—and I helped bring it about.

XQ. 923. And we are neither dependent on them for dyes nor for pharmaceuticals?

A. That is right, we are independent of them.

XQ. 924. Of course, you believe in an American dye indsutry?

A. Absolutely.

XQ. 925. Your heart is wholly here?

1915

A. My money is in it.

XQ. 926. No part of it back in Germany?

A. Not money, no, except a little stock I own here, and that I bought since the war.

XQ. 927. You believe in protecting and fostering the American industry?

A. Absolutely.

XQ. 928. Yes. Indeed, you have been very active in trying to do that?

A. In getting a satisfactory duty on it, yes, sir.

XQ. 929. Haven't you?

A. Yes, sir, I have been.

XQ. 930. When there was a petition before Congress to have an embargo against the importation of German dyestuffs, you were in favor of it, weren't you?

A. I was against it as unfair and unnecessary.

XQ. 931. Although you were a manufacturer, and if the German dyes had come in they would have been in competition with you?

A. I wanted——

XQ. 932. Isn't that right?

A. If they had come in free of duty, yes. I wanted a high duty to protect me as a manufacturer, and so stated on every occasion.

XQ. 933. You have been very anxious to import German dyes, haven't you?

A. No, sir; not anxious at all. I give my customers what they want.

XQ. 934. You have been asking the Government's leave to import German dyes, haven't you?

A. On customers' licenses.

XQ. 935. Haven't you?

A. On customers' licenses.

XQ. 936. I did not ask you on what.

A. No, sir, I did not ask to import dyes——

XQ. 937. Haven't you been asking the Govern-

ment ever since 1919 to be permitted to bring in German dyes?

A. My customers asked for licenses which I imported for them under the embargo act.

XQ. 938. And haven't you been importuning the Government to allow you to bring in German salvarsan?

A. Yes.

XQ. 939. Yes.

A. For physicians who desired it, on one occasion.

XQ. 940. Indeed, you are now bringing in German salvarsan, are you not?

A. I did bring in two lots, I think for physicians who wanted it and stated they preferred it for their own reasons.

XQ. 941. Now, you were not only active in investigations before Congress on the question of dyes, but you financed investigations of that sort, did you not?

A. No, sir, I never financed any of them.

XQ. 942. Let us see whether you did not. Do you know a man named Pickerel?

A. He is in my employ; certainly.

XQ. 943. Do you know a man named Dieters?

A. I met such a man in Washington; he used to be with the Chemical Warfare Service.

XQ. 944. Just met him casually?

A. He came to me.

XQ. 945. What?

A. Came to me with some stories.

XQ. 946. Came to you? I see.

A. Certainly.

XQ. 947. Did you employ him?

A. No, sir, I did not employ him for a moment.

XQ. 948. Did you pay him any money?

A. I loaned him some money, and I gave him some money when he lost his position.

XQ. 949. How much did you loan him?

A. I do not recall the figures. Several hundred dollars I presume. He came to me and told me he lost his position. That is my best recollection, Mr. Kresel.

XQ. 950. Now, Mr. Metz, it is not up to me to warn you and I do not propose to intimate that you are not telling the truth.

A. I am doing the best I can, Mr. Kresel.

XQ. 951. But I ask you again whether it is not a fact that you employed this man Deiters to get for you affidavits to be used in the dyes investigation, and that you paid him $6,000 in cash——

A. Oh, no.

XQ. 952. Wait a minute.

A. Go on.

XQ. 953. And that he rendered you a bill on the 23rd of October, 1922, for $14,765 for such services?

A. I have no such recollection.

XQ. 954. Is it simply a matter of recollection with you, Mr. Metz?

A. Mr. Deiters sent me a bill for something, and I sent it back. I don't know what the amount was.

XQ. 955. Oh, he did send you a bill?

A. He did send me a bill. I do not know what the amount was.

XQ. 956. Never mind what the amount was.

A. May I correct that?

XQ. 957. What did he send you a bill for?

A. May I correct that?

XQ. 958. No.

A. It was not a bill.

XQ. 959. What did he send you a bill for?

A. I don't know. He said he needed some money and sent me a memorandum.

XQ. 960. Sent you a memorandum or a bill because he needed money, did he?

A. Yes.

XQ. 961. And how much money did he need?

A. I don't remember the figures. I have got to look it up. I never gave it any attention, Mr. Kresel. I will have to refresh my memory. I do not know.

XQ. 962. Now look at the bill or memorandum and see if that refreshes your recollection (handing paper)?

A. Yes, that is it; but there is no basis for it.

XQ. 963. No, wait a minute; "that is it," that is enough.

A. But no basis for it.

MR. KRESEL: I ask that it be marked for identification.

THE COURT: Let it be so marked.

Paper marked "Plaintiff's Exhibit H: for Identification."

THE WITNESS: Pardon me, Mr. Kresel——

XQ. 964. Just a minute; there is no question pending.

A. Well, I want to modify that one.

XQ. 965. You had a conference with Mr. Deiters at the University Club in New York, did you not?

A. I do not recall the University Club.

XQ. 966. What club was it?

A. I was at a hotel with Senator Moses, as I recall it.

XQ. 967. What hotel?

A. I think it was the Chatham, but I am not certain. Senator Moses——

XQ. 968. In New York?

A. In New York.

XQ. 969. When you mentioned Senator Moses you mean United States Senator Moses?

A. George H. Moses, of New Hampshire, yes.

XQ. 970. And when was it that you had this conference?

A. I do not recall. During one of the hearings in Washington.

XQ. 971. What year was it?

A. I do not recall. It was a hearing before the Senate Committee I presume. You have got the record here. I do not know which one of those hearings.

XQ. 972. When you speak of the Senate Committee, do you mean the Committee over which Senator Shortridge presided?

A. No, previous; the Senator Watson Committee, I think it was called, or the one that he was Chairman of, I think. I believe that is the time.

XQ. 973. And at that meeting you engaged Mr. Deiters to obtain for you, to be used by Senator Moses, affidavits to show that the War Department of the United States was in favor of the dyes embargo and in favor of The Chemical Foundation, because it had been induced to take that position by a certain manufacturer of dyes?

A. I did not engage him, no, sir.

XQ. 974. Did he offer to do that?

A. Senator Moses asked him to.

XQ. 975. Senator Moses asked him to?

A. Asked him to get those records for him, yes, sir, which he had mentioned to Senator Moses.

XQ. 976. You knew that Mr. Deiters was an employee of the Government, did you not?

A. At that time, yes.

XQ. 977. That he was an employee of The Chemical Warfare Service of the Government?

A. Yes, sir.

XQ. 978. And you say now, do you, that Senator Moses, of the United States Senate, and not you, asked this employee of the Government to produce affidavits reflecting upon the actions of the War Department?

A. If he was asked, it was by Senator Moses, not

by me. I never asked him to produce those affidavits for me.

XQ. 979. Well, whether Senator Moses asked him or whether you asked him, is it not the fact that you promised to pay him for producing those affidavits?

A. I did not; I beg your pardon; I did not.

XQ. 980. And is it not a fact that you did pay him for it?

A. After the man lost his position, I gave him money; not for the affidavits, no, sir; never with that understanding, directly or indirectly, never.

XQ. 980a. And this bill or memorandum that you have identified is the bill or memorandum that Mr. Dieters sent you for his services in that connection?

A. I am not responsible for his bill.

XQ. 981. But that is what he sent you?

A. He sent me a bill. I won't say that is the one. He sent me a bill.

XQ. 982. You just said it was?

A. I beg your pardon. I am not sure. I was going to withdraw it and say he sent me a bill. I can not identify the copy you have there.

XQ. 983. Didn't you less than ten minutes ago say that this is a copy of what he sent you?

A. When I said that, you said there was no question. You put your hand up. I am modifying it now. I can't tell until I see my bill home. I do not believe it is such an amount.

XQ. 984. Where is your bill home?

A. I don't know if I ever kept it.

XQ. 985. So that you can not find the bill home?

A. I may be able to. I don't know. I never paid any attention to it. I laughed at it.

XQ. 986. Didn't you a few moments ago testify that you sent it back to Dieters?

A. I think I did; yes, sir. I am not sure.

XQ. 987. Then you haven't got it home?

A. I may have a copy of it home. I don't know. I never paid any attention to it. That is what I am trying to tell you. He sent me a bill which I indignantly repudiated.

XQ. 988. When he sent you the bill, didn't he send you a letter with the bill?

A. I do not recall, Mr. Kresel.

XQ. 989. Look at this letter and see if that refreshes your recollection?

A. I can't help what another man does. That is his construction of it. I had a letter from him. That may be it.

XQ. 990. And when you received this letter and the bill, I want to ask you what you wrote to Mr. Dieters?

A. I don't recall, Mr. Kresel.

XQ. 991. Did you write a letter to him denying what he said in this memorandum?

A. Possibly. No doubt I did.

XQ. 992. Well, will you produce any such letter?

A. If I sent it, how can I produce it? I paid no attention to it.

XQ. 993. Don't you keep copies of your letters?

A. No, I don't, not of very many things. I don't keep copies of personal things. They don't influence me.

XQ. 994. Listen, Mr. Metz——

A. You may have things that I have never seen.

XQ. 995 (reading). "Washington, D. C., October 23, 1922. I, Edward W. Deeters, hereby submit to Mr. H. A. Metz my bill for fees and expenses incurred by me in securing information and affidavits to be used by Senator George H. Moses, of New Hampshire, in the case of the dye embargo as per agreement between Mr. Metz, Senator Moses and myself, made in New York City, New York, in October, 1921, to wit: 1. That all information, evidence, or affidavits

secured by me should be used by Senator Moses and turned over to him or other persons designated by him. 2. That Mr. H. A. Metz take charge of the financial part of this agreement, defraying all fees and expenses incurred by me. Expenses: Personal fee for services rendered, $7,200; traveling expenses, $453; clerical help, $1,000. Special Expenses: (Securing affidavits, maintenance, and traveling expenses of persons making affidavits): Affidavit No. 1, $1,429; Affidavit No. 2, $1,163; Affidavit No. 3, $447; Affidavit No. 4, $942; Affidavit No. 5, $1,319; Affidavit No. 6, $812. Total, $14,765. Received on account, $5,000. Balance due, $9,765." Now I ask you to produce to this Court any copy of a letter from you to Mr. Deeters denying the truth of the statements that he made in this.

A. I will be glad to if I can find such a letter. I shall be glad to look it up just as soon as I go back. If I have a copy I shall certainly submit it, because I deny such statements.

XQ. 996. How much did you pay him?

A. I have not any idea.

XQ. 997. Just try to approximate it for us?

A. Nowhere near that amount.

XQ. 998. He says $5,000. How much do you say you paid him?

A. I gave him a thousand dollars at one time towards a mortgage on his house, I recall that. I do not recall the figures, Mr. Kresel.

XQ. 999. Well, a thousand dollars. Any more than that?

A. I recall one thousand dollars on a mortgage. His wife was sick, and his child, and I gave him a thousand dollars to pay on his mortgage.

XQ. 1000. You gave him a thousand dollars. Is that all?

A. No, I gave him smaller amounts at various times.

XQ. 1001. How much more?

A. As little as ten dollars at various times.

XQ. 1002. How much more?

A. I don't recall, Mr. Kresel.

XQ. 1003. Did you give him the thousand dollars by check?

A. I do not recall that, but I can look it up and see.

XQ. 1004. If you did, will you produce the check?

A. If I did, I certainly will.

XQ. 1005. Is it a fact that you gave it to him in cash?

A. Possibly I did. He was in New York and he came there crying about his house, to save him from being foreclosed. I will try to look it up and try to locate the date.

XQ. 1006. You did it just because he had to pay a mortgage on his house?

A. Because he lost his job because he tried to get this thing straight with Senator Moses, and I sympathized with the man on that account.

XQ. 1007. I see.

A. Absolutely, and no other reason, Mr. Kresel.

XQ. 1008. When he wrote you sending this letter under date of October 24, 1922: "My dear Colonel: I am enclosing herewith a statement. You understand how I am situated financially. I explained to you that it is necessary for me to have the money at this time. Taking over your work entailed great sacrifice on my part, and you of course are not willing that I should endure any further hardship. It is absolutely necessary that I receive a check from you by return mail. Very truly yours." Was it after receiving this letter that you gave him a thousand dollars to pay his mortgage?

A. I do not recall, but I sent no check by return mail, I can assure you.

XQ. 1009. Is it not a fact that you paid him a thousand dollars on account after you received this bill?

A. I do not recall, Mr. Kresel. I gave it to him in New York when he came with his mortgage and his note to the bank.

XQ. 1010. Won't your books show what you paid him?

A. If I gave him a check they certainly will.

XQ. 1011. And if you gave him cash won't it show, if it is an honest transaction?

A. Possibly not. I may have had it in my pocket and gave it to him, the same as I gave him ten dollars for his fare. If I find it I shall give it to you, Mr. Kresel. I can not do any more than that. And I will be glad to do it, and give you any other amounts. I will be glad to. I have nothing to conceal in that matter.

XQ. 1012. Mr. Metz, you were abroad in the summer of 1921, were you not?

A. 1921, yes.

XQ. 1013. And you went to see your old friends, the Germans, did you not?

A. I went to see——

XQ. 1014. Did you, yes or no?

A. I resent your putting it that way—my friends, the Germans.

XQ. 1015. You went to see your former principals?

A. Certainly, I went to the works. Certainly, I went on a business trip.

XQ. 1016. And you discussed with them the return of the patents here in suit?

A. No, sir, I never discussed the return of the patents. I never thought they would get the patents back.

XQ. 1017. Do you mean you did not discuss with them the return of these patents?

A. I don't think I specifically discussed it with them.

XQ. 1018. Is it only thinking, or do you say you did not?

A. I might have discussed the general proposition, but if I did it was in a general way.

XQ. 1019. I did not ask you what you might have done.

A. I can not answer differently than that.

THE COURT: You will have to say whether you did or did not.

THE WITNESS: I do not know, your Honor. I do not know specifically.

XQ. 1020. Did you not testify under oath that you did discuss it with them?

A. Now you give me——

XQ. 1021. Oh, when you see I have it in writing——

A. Oh, no.

XQ. 1021 (continuing.) You are willing to admit it, are you?

A. No. I beg your pardon. I discussed it in 1920. That is not fair, Mr. Kresel. In 1920.

MR. ANDERSON: Just a minute.

THE COURT: Have you some objection to make, Colonel Anderson?

MR. ANDERSON: I object to that method of dealing with the witness. The witness is trying to testify to various and sundry transactions. Now I felt the witness is absolutely helpless and is entitled to courtesy from counsel.

THE COURT: I am afraid I do not understand you. You think what?

MR. ANDERSON: That the witness is entitled to courtesy from counsel. I have that suggestion.

THE COURT: I think he has had it in full measure, and if you think the witness needs any protection you should come to his rescue.

MR. ANDERSON: No, I do not, but I think at the proper time if the question is improper——

THE COURT: I think Mr. Kresel has shown the utmost restraint, Colonel Anderson, and I shall no longer hesitate to say so.

MR. ANDERSON: Your Honor's judgment will of course control, but I feel that way and I can only address the Court. You are the only person I can address myself to.

THE COURT: But I think the objection is not well taken. I think instead of criticism of Mr. Kresel at this time he is to be commended for the restraint he has shown. The time has come when this witness must answer these questions or abide by the consequences. You have observed him with care. I have observed you observing him. I have observed him throughout. The time has come, and from now on, evasion, will not be tolerated.

MR. ANDERSON: I quite agree with your Honor that evasion is not to be tolerated under any circumstances.

THE COURT: I appreciate your position, Colonel Anderson.

MR. ANDERSON: I was not impressed with the fact that the witness was undertaking to evade.

THE WITNESS: I assure your Honor that I have not evaded.

THE COURT: I can not hear you, Colonel Anderson.

MR. ANDERSON: He was going over a very long record. I do not want to argue with the Court on the subject, but merely to note an objection.

THE COURT: I do not want to discuss it either, because the thing amounts now to a demonstration and not an opinion on my part. So if you can help the witness by suggesting to him what I suggested to him on Saturday and this morning you will be doing the witness a favor—and that is to stop evasion and answer questions, and stop argument. This is not the place for that.

MR. ANDERSON: I quite agree, if your Honor please, and I am not undertaking to testify, nor am I undertaking to control the examination in any respect. I have not interrupted it, I have even refrained from making objection where I thought I should object, because I believe in the utmost latitude. If your Honor thinks the witness is evading I should be very glad to say that the witness should not evade.

THE COURT: This Court will be glad to protect in full measure any witness, as I advised Mr. Metz on Saturday or Friday, unless he undertakes to protect himself. He has not needed protection from aggression of counsel. There is no need of discussing it further, Colonel Anderson.

MR. ANDERSON: I was not doing it, but my duty is to address myself to the Court when the question is raised.

THE COURT: I understand.

MR. ANDERSON: I never argue with this Court or any other Court when it has reached its conclusion.

XQ. 1022. I asked you whether you had not testified that you had discussed with the Germans on your trip abroad the question of the return of these patents to them. Do you say now that you had?

A. In 1920 I did, yes, sir, when I went abroad.

XQ. 1023. In 1920 you said you discussed that?

A. Yes, sir.

XQ. 1024. Not in 1921?

A. I do not recall. In 1920 I discussed it with all the people who had patents here.

XQ. 1025. Did you not also discuss it with them in 1921?

A. Not specifically, I don't think.

XQ. 1026. You were abroad in 1921?

A. And 1922.

XQ. 1027. Now I read to you your testimony before the Shortridge Committee at page 877, as follows: "Undoubtedly our patent laws, in not providing for carrying out invention are to blame for conditions that existed, and in my discussion of this point with the foreign concerns last summer, they conceded this and said that they would be perfectly willing to continue licenses granted under their patents, if their property were returned to them."

A. That is true. That was their statement.

XQ. 1028. Now you were testifying to that in 1922?

A. That is right.

XQ. 1028a. And you state that conversation took place "last summer." That was 1921, was it not?

A. It also took place in 1920.

XQ. 1028b. Well, did it take place in 1921?

A. Apparently, yes; but in 1920, positively.

XQ. 1029. Is it not a fact that, after you had gone abroad and discussed with the Germans the question of the return of these patents to them, that they sent a commission here early in 1922 consisting of Dr. Oppenheimer, Dr. Holdermann and Dr. Wagner to get these patents back, is it not?

A. I do not think that that was the purpose of the commission.

XQ. 1030. Didn't you meet them in New York in your own lawyer's office?

A. I did not. I was in Europe when they came here. I met one of the gentlemen before he sailed from Berlin, Dr. Oppenheimer.

XQ. 1031. Didn't you send them to your own lawyer?

A. I gave Dr. Oppenheimer a note to Mr. Vandiver the night before he sailed.

XQ. 1032. Mr. Vandiver is your lawyer?

A. He was my counsel in the proceedings against the Alien Property Custodian.

XQ. 1033. He was then your lawyer?

A. And still is.

XQ. 1034. And he is in Court here with you now?

A. Yes, sir; as my counsel.

XQ. 1035. Did you testify before the Shortridge Committee as follows: I read from page 883. Talking about dyestuffs, Senator Shortridge, the Chairman, questioning you said: "At the present time is there or is there not competition among the manufacturers?

"Mr. Metz: There is the strongest kind of competition, because everybody is trying to get rid of the stock on hand and turn it into cash."

Did you so testify?

A. Yes, sir; that is a fact.

XQ. 1036. Was it true?

A. Yes, sir.

XQ. 1037. At page 894, you were questioned by the Chairman as follows:

"Mr. Metz, I have been very much interested in your statement. I suppose we all agree that we want to continue the dye chemical industry in America." and you said:

"Absolutely.

"The Chairman: It gives employment to our people and legitimate profit to capital invested and to be invested. Now there was a time when we were, in a sense, almost wholly dependent upon Europe."

And you said:

"The whole world was on Germany; let us put it more concretely.

"The Chairman. Well, I have understood that Switzerland supplied some proportion of these things.

"Mr. Metz: Only a small per cent.

"The Chairman: I have understood that Switzerland manufactured a very considerable quantity.

"Mr. Metz: And they got their crudes and intermediates from Germany.

"The Chairman: Well, then, we will assume as a fact, fixing a time in 1913 and 1914, say—and then you interrupted and said:

"Germany had the world by the throat, absolutely.

"The Chairman: Yes. Now then for reasons which have developed, America has come to be a very important producer of dyes and chemicals. That is true, is it not?

"Mr. Metz: Yes, sir.

"The Chairman: An embargo was effected, resulting from the war and the laws which have existed since the determination of the great war. Now it is charged by many, and believed by many, that there has already grown up and exists today in America what is called a monopoly in this industry. From your knowledge would you say there is or is not a monopoly?"

And you said:

"I would say that at the present time there is not." Was that true?

A. Yes, sir; that was true in my opinion.

XQ. 1038. And that was true of pharmaceuticals?

A. Yes, sir.

XQ. 1039. And of course you are opposed to monopoly are you not?

A. I don't believe in a monopoly in the ordinary sense. I believe there should be free competition.

XQ. 1040. You remember when the Alien Property Custodian sold the Bayer plant and with it twelve hundred German patents; you remember that, do you not?

A. I remember that, yes. It is a matter of information and belief.

XQ. 1041. And you remember at a meeting of the dyes institute and learned that Mr. Matheson who was in control of the Cassella plant here in the United States was selling the Cassella patents to the National Aniline Company, did you not?

A. He claimed, I believe, to have transferred them.

XQ. 1042. You learned that at that time?

A. Yes, sir; that is right.

XQ. 1043. And you saw at that time that that would give the National exclusive control of the manufacture of such products as the Cassella patents covered, did you not?

A. Yes, sir.

XQ. 1044. But you saw the danger of it, did you not?

A. No, sir; I didn't think Matheson had a right to do it.

XQ. 1045. Didn't you see the danger of it?

A. That was not my point.

XQ. 1046. Didn't you so testify before the Shortridge Committee?

A. They would have a monopoly of course, naturally, under the patents.

XQ. 1047. Now, you see you switch again.

A. I am trying to give you my attitude of mind, Mr. Kresel.

XQ. 1048. Didn't you at that time, when you learned of the possibility of these Cassella patents going to the National, see the danger of that, that it would create a monopoly?

A. In those particular products, yes, naturally.

XQ. 1049. Before the Shortridge Committee you testified:

"I was making salvarsan and novocain and I had licenses for various patents covering vat colors; and at that meeting of the institute, a claim was made that Mr. Matheson had transferred the Cassella patents to the National and that they would have exclusive control of the manufacture of such patents as the Cassella patents covered. I saw the danger of this."

A. Yes; that is correct.

XQ. 1050. And when you saw the danger of this, what did you do about it?

A. I spoke to Mr. Garvan about it, if I remember correctly.

XQ. 1051. Oh, you did? You spoke to Mr. Garvan about it. Now, that was in 1921, was it not?

A. I do not recall the date. The records will show.

XQ. 1052. When you spoke to Mr. Garvan about it, was Mr. Garvan then the President of the Chemical Foundation?

A. I do not think it existed at that time, Mr. Kresel.

XQ. 1053. That was before the organization—

A. I would have to look up the date.

XQ. 1054. And that was before the organization of the Chemical Foundation. Mr. Garvan, however, was the Alien Property Custodian?

A. Yes. The dates I do not remember.

XQ. 1055. It was the Alien Property Custodian that had sold these Bayer patents?

A. Yes, sir.

XQ. 1056. And shortly after you talked to Mr. Garvan about the danger that you saw in having such a large number of patents go into the hands of a single manufacturer, do you not recall attending a meeting at which Mr. Choate appeared and outlined the proposed organization of The Chemical Foundation?

A. I do. I well remember it.

XQ. 1057. That was the meeting of the Manufacturing Chemists' Association?

A. Of which I am a member; yes, sir.

XQ. 1058. Of which you were a member. And it is Mr. Joseph H. Choate that you are talking about now, is it not?

A. Yes, the gentleman sitting here.

XQ. 1059. And Mr. Choate explained what it was intended to do about the remaining German patents, did he not?

A. Yes, sir.

XQ. 1060. He explained that the Alien Property Custodian proposed to sell those patents to The Chemical Foundation?

A. Yes, sir.

XQ. 1061. He explained that it was for the purpose of having The Chemical Foundation give nonexclusive licenses on these patents to any qualified American citizen?

A. Yes, sir.

XQ. 1062. Upon equal terms and upon equal rights?

A. Yes, sir.

XQ. 1063. He explained that the United States Government was to have a free license to those patents?

A. I think that was part of the explanation.

XQ. 1064. He explained that they were to be sold for $250,000, did he not?

A. Yes, sir.

XQ. 1065. He explained that Mr. Garvan was to be the President of the Corporation, did he not?

A. Well, I knew he was to be. Whether it was explained at that meeting or not I don't know. But I knew that was going to come.

XQ. 1066. And after you learned what you have just stated of the purposes of the organization of this corporation and of the intended sale to it by the Alien Property Custodian of these patents, you joined the organization and subscribed $50,000 to it?

A. I did at that same meeting, around the table.

XQ. 1067. Now, you knew at that time as much about the value of these patents as you know today, didn't you?

A. I certainly did.

XQ. 1068. If your testimony is true, you knew that the salvarsan patent alone was worth a million dollars?

A. I certainly did.

XQ. 1069. And yet you were willing to become part and parcel of this organization that you knew was to buy the whole kit and crew of them for $250,000?

A. I saw a good thing as a stockholder and was perfectly willing, yes.

XQ. 1070. That is your attitude, is it?

A. That is my answer on that. I had no interest in the Germans.

XQ. 1071. And so, seeing a good thing, you became a stockholder and are still a stockholder of The Chemical Foundation?

A. Yes, I still hold certain shares for three companies.

XQ. 1072. Did you ever receive a dividend on your stock?

A. Not to my knowledge.

XQ. 1073. Wouldn't you know if you had?

A. I am quite sure I have not.

XQ. 1074. You were also a member at that time of the Dyes Institute?

A. The Consolidated Color Company was; yes, sir.

XQ. 1075. You are aware that the Government charges in this case that the American Dyes Institute and its members were in a conspiracy to defraud the Government of this property?

A. I have read the charge.

XQ. 1076. You are one of the conspirators then?

A. I was not on the Executive Committee.

XQ. 1077. I see. You were not on the Executive Committee. When you learned that The Chemical Foundation was about to take over these patents you thought that there was safety in that for the American industry, did you not?

A. It didn't make any difference.

XQ. 1078. I want to know yes or no whether you thought there was safety in that?

A. I did not think it made any difference to the industry, Mr. Kresel.

THE COURT: Will you suspend a minute, Mr. Kresel?

Mr. Galloway, will you come to the Bench?

(Messrs. Anderson, Galloway and Kresel then conferred with the Court, and a short recess was declared).

XQ. 1079. Now, Mr. Metz, as you have been reflecting upon your testimony of the past twenty minutes, has it occurred to you that there is anything about the Deeters transaction that I inquired about that you have not stated?

A. I do not recall anything, Mr. Kresel, that I have not told you.

XQ. 1080. You know Gaston Means, do you not?

A. No, sir.

XQ. 1081. You mean you have never met him?

A. Never met him to my knowledge.

XQ. 1082. Or spoken to him?

A. Never to my knowledge saw him.

XQ. 1083. You know Cyril Bennett, do yo[illegible]t?

A. Yes, sir, very well.

XQ. 1084. You employed him, did you not?

A. No, sir, never employed him.

XQ. 1085. Did you pay him any money?

A. I loaned him money, yes, sir, on various occasions.

XQ. 1086. You endorsed his note to the bank, did you not?

A. When he was with—

XQ. 1087. Yes or no? I did not ask you when.

A. Yes, I endorsed a note for him at one time for the bank.

XQ. 1088. What bank was it?

A. Gotham National, if I remember.

XQ. 1089. Yes, you remember correctly. And how much?

(No answer.)

XQ. 1090. And how much was the note?

A. I do not recall that, Mr. Kresel. I think it was $5,000 for the Dyers Colors Institute, Dyers Trade Journal.

XQ. 1091. Didn't you know that Bennett and Gaston Means made the investigation of this matter which resulted in this case?

A. No, I don't know it, no, sir; only from hearsay I have heard it mentioned.

XQ. 1092. You have heard it.

A. I have heard it rumored, that is all.

XQ. 1093. And you know, don't you, that Gaston Means was a German spy here during the war?

A. I do not know it.

XQ. 1094. Don't you know that it was so testified before the Overman Committee in the Senate?

A. I do not recall such testimony, Mr. Kresel; never read it.

XQ. 1095. Before the Committee of Ways and Means of the House on June 18, 1919, did you testify as follows: "Now, Mr. Chairman, there is another great danger as I view it. The question has been raised of the Chemical Foundation taking over these patents. Well, there is safety in that." Did you so testify?

A. Yes, sir.

XQ. 1096. And this was in June, 1919. You realized then, did you not, that this arrangement that Mr. Choate had outlined at the meeting of the manufacturers for the conveyance of these patents by the Alien Property Custodian to The Chemical Foundation would avoid the very danger that you saw in the transfer of the Bayer patents and the Cassella patents?

A. Yes, sir.

XQ. 1097. That is it would avoid these German patents which had controlled the dye industry, which had permitted Germany to have a monopoly of the dye industry, getting into the hands of somebody else that could monopolize it; is that it?

A. So far as the patents were concerned; yes, sir. That would kill us.

XQ. 1098. And you thought that the arrangement outlined by Mr. Choate for the conveyance of these patents to The Chemical Foundation was an arrangement that was desirable in the public interests, did you not?

A. Yes, for those interested. Yes, sir, in that way.

MR. KRESEL: I ask that the part wherein he says "for those interested" be stricken out.

THE COURT: Read the question and the answer.

(XQ. 1098. Read as above recorded, with the answer thereto).

XQ. 1099. I ask you to answer the question directly.

THE COURT: No, I deny that motion, Mr. Kresel. You may have the question repeated, if you wish, or you may repeat it, but I deny your motion.

XQ. 1100. Did you think that the arrangement was in the public interest?

A. No, not in the general run—did not give that a thought, Mr. Kresel. I thought it was the industry that was interested in the patents.

XQ. 1101. It was the interest of the chemical industry?

A. To that extent, yes, certainly. The American industry.

XQ. 1102. You testified before the Shortridge Committee in 1922 that you were not competent to give the value of these patents, did you not?

A. I can't give all of them. I must have testified that.

XQ. 1103. Did you so testify? If you do not remember I will read it to you.

A. I probably did testify to that. I could not testify to it on all the patents.

XQ. 1104. If you did so testify I want to know when it was you became competent to testify to the value?

A. I knew at once on the salvarsan and novocain patents. Not all of them I could not tell you, Mr. Kresel.

XQ. 1105. I will read to you what you said before the Committee: "I am not competent to discuss the

value of the patents taken over by The Chemical Foundation, but based on Mr. Garvan's statement they would not seem to amount to much." You testified to that, did you not?

A. Based on Mr. Garvan's statement.

XQ. 1106. Now I want to know the time when you became competent to testify as to the values that you undertake to testify here?

MR. ANDERSON: What page is that on, Mr. Kresel?

MR. KRESEL: Page 867.

A. I always was on the salvarsan patent, Mr. Kresel.

XQ. 1107. Listen to what you said about the salvarsan patent in the same connection: "So far as salvarsan is concerned I made a statement before the Finance Committee that on a basis of one million dollars for that patent I could on the basis of the royalty itself, which is only five per cent of the selling price, pay ten per cent for ten years. That patent has about seven more years to run." You remember that?

A. Yes, sir.

XQ. 1108. You did not there undertake to say that in your opinion this salvarsan patent was worth a million dollars, did you?

A. Salvarsan is about $700,000 on a basis of ten per cent for ten years. That is what I testify.

XQ. 1109. You did not there testify in your opinion the patent was worth a million dollars, did you?

A. I testified what stands in there. I did not testify here it was worth a millions dollars; I said the two of them were worth a million dollars.

XQ. 1110. Which two?

A. The neo and the salvarsan together.

XQ. 1111. When you were testifying before this

Finance Committee that you speak of you were testifying about both, were you not?

A. Approximately, yes. Ten per cent for seven years, or ten years, I figured at the time.

XQ. 1112. I am not asking you what the income was. I am pointing out to you that even there you did not testify that in your opinion this one or both of those patents was worth a million dollars, did you?

A. I was not called upon to do so specifically, Mr. Kresel.

XQ. 1113. That is your answer.

A. Yes, sir.

XQ. 1114. But now you say that the two salvarsan patents are worth a million dollars?

A. Yes, sir.

MR. ANDERSON: He said they were worth a million dollars.

XQ. 1115. Were worth a million dollars?

A. Yes, sir.

XQ. 1116. In April, 1919?

A. Yes, sir.

XQ. 1117. You mean they were worth that to you?

A. To any one who had them.

XQ. 1118. And that the Novocain patent was worth $200,000?

A. At least that, I testified, I believe.

XQ. 1119. Will you not be a little more liberal with us? Is it not worth more than that?

A. Only had four years to run, Mr. Kresel. The neo was worth more.

XQ. 1120. You think it was worth over $200,000?

A. Well, the returns show it.

XQ. 1121. I did not ask you about the returns.

A. I think it was worth over that; at least $200,000.

XQ. 1122. Were the salvarsan and neosalvarsan patents worth a million in April, 1919?

A. In my opinion, yes.

XQ. 1123. What were they worth in 1920, in your opinion?

A. They were worth that ever since; worth it today in my opinion.

XQ. 1124. So in your opinion the value of these patents has neither increased nor diminished since April, 1919.

A. The royalties accumulating or accumulated, make it worth that in my opinion.

XQ. 1125. Please answer my question?

A. Yes, sir; I think it is still worth that.

XQ. 1126. It has neither diminished nor increased?

A. That is a matter of opinion. They are still worth a million dollars in my opinion.

XQ. 1127. Have they since April, 1919, and the present day been worth more than a million dollars?

A. I should not estimate any more than that. It is a speculation.

XQ. 1128. So that at all times between April, 1919, and the present date, in your opinion, these two patents are worth a million dollars?

A. They still are.

XQ. 1129. Were they ever worth more than a million dollars?

A. I could not say that. I never estimated beyond the returns on them, in an off-hand way.

XQ. 1130. Did you ever estimate that they were worth more than a million dollars?

A. I never went beyond the figure that I would give that much for them at the time.

XQ. 1131. I understand that that is your testimony, that you would have been willing to pay a mil-

lion dollars for them. But did you ever estimate their value to be greater than a million dollars?

A. I never considered it further, Mr. Kresel.

XQ. 1132. Did you ever testify they were worth five million dollars?

A. I might have said so, yes, and they would have been to some folks. They would have been to me if I had them exclusively.

MR. KRESEL: I ask that the answer be stricken out.

A. (continued). I think I did mention that figure once, Mr. Kresel.

THE COURT: Motion granted.

XQ. 1133. Did you not testify before the Committee on Finance of the United States Senate that in your opinion these two patents were worth five million dollars?

A. Yes, they may have been worth that. I think I mentioned that figure once.

XQ. 1134. Now, which is it? Were they worth a million dollars or five million dollars?

A. It would depend upon the time and the conditions what they were worth.

XQ. 1135. I have asked you the time. You have told me that at all times since April, 1919, to the present day there has been no difference in the value of them, have you not?

A. I said I would give a million dollars at any time.

XQ. 1136. Did you not say that?

A. That was my opinion of their value, yes.

XQ. 1137. And yet in 1921 you testified they were worth five million dollars?

A. Even on five they would pay a return, Mr. Kresel.

XQ. 1138. Did you testify that?

A. Yes.

XQ. 1139. What do you want the Court to take now? A million dollars as your testimony or five million dollars?

A. The figures are there. I did not verify them. I think at a million absolutely. That is the figure I swore to I would have paid, Mr. Kresel.

XQ. 1140. What do you want to say now? Were they worth a million dollars or were they worth five million dollars?

A. I should say they are worth a million easily, possibly five. You can verify that figure, as I told you.

XQ. 1141. And you would have been willing to pay five million dollars for these two patents, would you not?

A. Under certain conditions, certainly.

XQ. 1142. If they had been put up by the Alien Property Custodian for sale, you would have been willing to bid five million dollars for them, would you not?

A. It would depend on the conditions, Mr. Kresel.

XQ. 1143. No conditions at all; just the conditions that existed at that time, namely, that there were the patents and there were four licenses that had been issued thereon by the Federal Trade Commission. Under those circumstances would you have been willing to bid five million dollars for them?

A. No, sir. I would have been willing to bid one million with the licenses.

XQ. 1144. I read to you from your testimony before this Committee on Finance given by you in the month of August, 1921:

> "MR. METZ: On the basis of $75,000 and a five per cent royalty and the profit they made here, anybody that paid five million dollars for that patent would have a very cheap bargain, because they would have a monopoly, and with a

monopoly I could on the present output make a great profit. I would gladly have paid five million dollars for it if I could have gotten it."

Did you so testify?

A. Under a monopoly, yes, sir. Under an absolute patent, yes.

XQ. 1145. You knew that with those four licenses issued with the Federal Trade Commission, you could not get a monopoly?

A. Then it was not worth five million dollars. I said if it was so; I so testified.

XQ. 1146. You knew that the Alien Property Custodian could not sell them without their licenses, did you not?

A. But with them I would have paid a million on them. I would not have paid five million.

XQ. 1147. Let us see: If you had bought these patents, you could have imported the products covered by them, if you had wanted to, could you not?

A. Yes, sir.

XQ. 1148. You could have refused to issue licenses under them to anybody that you wanted, could you not?

A. Further licenses, yes.

XQ. 1149. You would have been receiving a five per cent royalty from the four licensees under the Federal Trade Commission?

A. I could have claimed those.

XQ. 1150. That would have paid you a ten per cent differential, would it not, as between you and a manufacturer and those four others?

A. Yes, sir, certainly.

XQ. 1151. How long would it take you with that differential to have driven the others out of the market?

A. Even if I did not drive them out and continued at the same price, it was worth a million dollars.

XQ. 1152. Would you not have had a monopoly if you had bought these patents?

A. If I wanted to exercise it, certainly, Mr. Kresel, and that is what made the value, exactly.

XQ. 1153. So that when you say that these patents are worth a million dollars, you are placing a value on them as a monopoly?

A. No, sir; as they stand today with the licenses.

XQ. 1154. As they stood in April, 1919, not today.

A. Yes, sir, with the royalties in 1919, yes, sir; with the licenses on them.

XQ. 1155. And you admit that if you had gotten them, you could have had a monopoly?

A. I have always said I was against a monopoly on an article of that kind.

XQ. 1156. Do you not admit that you could have had it, if you had wanted it?

A. Any one that bought it could have had it, subject to the licenses.

XQ. 1157. You do not mean to say that the million dollars value which you placed on these two patents was a market value, do you?

A. I mean to say the returns would have——

XQ. 1158. Do you or do you not mean to testify that that is the market value of those patents at that time?

A. What do you mean by "market value," Mr. Kresel?

XQ. 1159. That is just it. I want to know what you mean by it?

A. That it is worth that to any one.

XQ. 1160. I do not know anything about it. What did you mean when you answered Colonel Anderson's question that the fair market value of those patents was a million dollars?

MR. ANDERSON: I did not say "fair market value." I said, "the fair value."

MR. KRESEL: "Fair value;" excuse me.

MR. ANDERSON: I did not say "market value."

MR. KRESEL: Excuse me. I stand corrected.

XQ. 1161. Did you mean to testify to the fair market value or the fair value?

A. To the fair value to anyone that bought those patents.

XQ. 1162. Did you mean to testify to the fair value or the fair market value?

A. Fair value, I should take it, to anyone.

XQ. 1163. You know, do you not, that there is no market value of patents?

A. In the ordinary sense, certainly.

XQ. 1164. There is or is not?

A. There is not, certainly; I know that.

XQ. 1165. Now let me read to you the question that Colonel Anderson put to you. I read from page 1719:

> "Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of patent No. 986,148 which you have described as covering salvarsan, and re-issue patent No. 13,848, which you have described as covering neo-salvarsan, on April 10, 1919?"

Do you remember that question?

A. I do recall it from the record.

XQ. 1166. Now then, do you still say that the fair market value of these two patents was one million dollars in April, 1919?

A. I say the fair value of these patents. There was no market value, of course.

XQ. 1167. And what you mean by that is that you would have been willing to pay that for them?

A. Yes, sir; gladly.

XQ. 1168. If you had bought these patents, you would have been in a position to fix any price for the product that you pleased, would you not?

A. Not with the license outstanding.

XQ. 1169. With the ten per cent differential you have already told me that you could drive those out of the market, could you not?

A. I do not believe the ten per cent would have made the difference.

XQ. 1170. Well, if you could import from Germany, as you would have imported——

A. I would not have imported, Mr. Kresel.

XQ. 1171. As you could have imported, you could have driven your competitors out of business here, could you not?

A. That would depend upon how much cheaper they could manufacture.

XQ. 1172. Well, you know they manufactured cheaper, don't you, over there, than here?

A. I am speaking of the American manufacturer.

XQ. 1173. No, no, I am speaking of the German, if you please.

A. I never had in mind closing American plants and taking German stuff at that time.

XQ. 1174. I didn't ask you that. Please listen to my question. You know, don't you, that the Germans produced this article at a much lower price than the Americans can?

A. I don't know it today, Mr. Kresel.

XQ. 1175. Well, did you know it in 1919?

A. No, sir; I did not know it.

XQ. 1176. Did you know it in 1920?

A. No, sir.

XQ. 1177. When you were abroad in 1920 and 1921, don't you know what they were selling them at?

A. For export, at much higher than the market price in Germany and higher than our price here in some instances.

XQ. 1178. You mean that you are now importing from Germany and paying more for the product than you could buy it here for?

A. With the duty, yes; more than we could make it for here; the small amounts I have imported.

XQ. 1179. And you are importing it from your former principals?

A. I am only——

XQ. 1180. You are importing it from your former principals?

A. I am not importing. I had imported two lots, special orders.

XQ. 1181. Of course you knew, didn't you, that at the price you paid for these patents, it would eventually go back to your German friends?

A. Oh, no, it wouldn't. Why should it?

XQ. 1182. Didn't you think that the money would be returned to them by the Government?

A. I had no reason to form an opinion.

XQ. 1183. Had you never thought of it?

A. I never thought of that. Our claims against Germany would even that up.

XQ. 1184. You mean that when you were considering the value of these patents it never occurred to you that no matter what you paid for them, the Germans would get what you paid?

A. I had no such thing in mind, Mr. Kresel.

XQ. 1185. No such thing; that was farthest from your mind?

A. I didn't give it a thought. The question wasn't up.

XQ. 1186. Well, your arrangement with the Germans still continues?

A. To what extent, Mr. Kresel?

XQ. 1187. I don't know to what extent. Your exclusive license, you told us this morning, still continues?

A. Yes, sir.

XQ. 1188. Your agency still continues?

A. Yes, sir.

XQ. 1189. And when you started manufacturing salvarsan here, you did that contrary to your arrangement with the Germans, didn't you?

A. On the contrary, with their permission, when I started manufacturing under the patent.

XQ. 1190. Contrary to your contract, didn't you?

A. The contract was amended and I had the right to do it in 1916.

XQ. 1191. It was contrary to your written contract of 1912, was it not?

A. There was a change in the contract.

XQ. 1192. Was it contrary to the written contract of 1912?

A. It was not under the terms of the 1912 contract. It was a new contract, a new arrangement, an amendment thereto, if you put it that way.

XQ. 1193. Did not the 1912 contract prohibit you from manufacturing salvarsan here?

A. I couldn't manufacture salvarsan. The patent prohibited me from doing it. I had no right to until I got permission.

XQ. 1194. Did not the terms of your contract prohibit you from manufacturing?

A. It didn't mention the fact that I couldn't manufacture. It mentioned that I was agent for their goods.

XQ. 1195. When you were manufacturing here,

you expected to have to account to your Germans for doing that, didn't you?

A. No, sir; that was never mentioned.

XQ. 1196. Didn't you so tell Mr. Choate when he was examining you?

A. Possibly that might have happened later on, but there was no mention at the time, Mr. Kresel.

XQ. 1197. I didn't ask you anything about any particular time. Didn't you tell Mr. Choate, when he was examining you in the office of the Alien Property Custodian, that you expected to have a severe session with the Germans after the war for making salvarsan at all?

A. I do not recall using those words, Mr. Kresel. I may have said something of the kind.

XQ. 1198. Let me read it to you.

A. I should be glad to have you.

XQ. 1199. I read from the stenographic report of your examination, page 22, as follows. The date is September 23, 1918. Question by Mr. Choate:

> "Mr. Metz, I can very easily see why, as long as you were under the contract of 1912, you kept the pharmaceutical and general business separate. But what was the point after you had them both?"

And your answer was:

> "I had a factory in Brooklyn, Herman A. Metz, doing pharmaceutical work. That building belonged to me and that was a separate thing entirely. You see the reason for that"——

And then Mr. Choate interposed by putting this question:

> "You are quite sure that that was not done with a view to making the accounting easier?"

And your answer was:

> "No, nothing whatever to do with that. There can not be any accounting on that now. After the war, I think I will have a severe session for making salvarsan at all."

A. That probably was true at that time.

MR. ANDERSON: Where are you reading that from?

MR. KRESEL: I am reading from a report of an examination of Mr. Herman A. Metz before Mr. Joseph H. Choate in the office of the Alien Property Custodian on September 23, 1918.

MR. ANDERSON: Is it in the official record? I have never seen it.

MR. KRESEL: It is an official record of the Alien Property Custodian, I suppose, or a copy of it.

XQ. 1200. Your estimate of a million dollars as the value of these two patents was based upon the assumption that you would have these patents and that you would be under no obligation to license anybody; isn't that right?

A. Quite right, sir.

XQ. 1201. And upon the assumption that you would be under no obligation to give to the United States a free license on all those patents; isn't that right?

A. Yes, that is true, naturally.

XQ. 1202. And upon the assumption that you would not be limited to a six per cent return upon your investment?

A. Certainly.

XQ. 1203. And upon the assumption that you would not have to devote all above six per cent for the advancement of the chemical industry?

A. Certainly.

XQ. 1204. Now I am going to ask you to tell this Court what in your opinion those two patents were worth, upon these conditions; namely, that the purchaser had to issue non-exclusive licenses on these patents to all Americans upon equal terms and upon equal royalties; that the purchaser had to give a free

license upon all the patents to the United States Government; that the purchaser had to give away for public purposes everything that was made above six per cent on the investment?

MR. ANDERSON: If your Honor please, I have to note an objection to that question, because it does not state the facts in the record and it is not based upon any facts shown in the record. It is a hypothetical question, and of course it must be predicated upon facts. It is contended here, and will be very earnestly contended in this case, that the charter is not susceptible of any such construction; and that being the case, a question predicated upon that construction of the charter, no part of which question we think can be sustained by the language of the charter itself, would be of course an improper question. I therefore subject the objection to the question.

MR. KRESEL: I desire to be heard, your Honor. I deny entirely Colonel Anderson's view of what is proper in a hypothetical question. I purposely refrained from assuming those to be the facts. This man has taken it upon himself to qualify as an expert on the values. I am asking him to assume certain conditions. Whether those conditions prevailed here or no I am not discussing with this witness, that is a matter that we have to discuss with your Honor. But I am entitled to have this expert assume a state of facts and give an answer thereon.

MR. ANDERSON: I would say in reply that I think a hypothetical question must be predicated upon a state of facts appearing in the record where it is not taken in advance of the hearing on the promise to prove those facts to exist, and then if they are not proved the hypothetical question goes out, along with the answer. In the next

place, I must take exception to the suggestion of counsel that the witness has assumed, as I think he said, to qualify as an expert. The witness is here under subpoena and he was asked questions by counsel on direct examination which we assume qualified him as an expert.

THE COURT: Tell me this, Colonel Anderson. Suppose it should be determined, though I am not now determining it, that the charter of this defendant is open to such construction, which you deny, would the answer to Mr. Kresel's inquiry then be pertinent to the issues in this case?

MR. ANDERSON: I will put it this way, your Honor: I do not venture to suggest the question to counsel, but he might say, assuming so and so to be the truth, what then would be your idea of the value of the patents. But if it is put as a fact, then it must appear of record in order to be a proper question.

MR. KRESEL: I think, Colonel, if you will permit the stenographer to read the question you will agree with me it is not open to the criticism you have just made.

THE COURT: Do you care to have it read, Colonel Anderson?

MR. KRESEL: I have assumed, and I will ask him to assume that. If it does not meet that, I will correct it.

(XQ. 1204 read by the reporter as above recorded.)

MR. ANDERSON: That was under these conditions.

THE COURT: As I understand, Mr. Kresel is ready to make it correspond to your ideas.

MR. KRESEL: May I reframe the question?

THE COURT: Yes.

XQ. 1205. Mr. Metz, I want you to assume for the

purposes of this question that the purchaser of these patents would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that he would have been entitled to retain of all the profits made only six per cent upon his investment, and that he would have been obligated to devote everything above six per cent to the advancement of the chemical industry of the country. Upon those assumptions will you tell the Court what in your opinion those patents were worth on the 10th of April, 1919?

MR. ANDERSON: The objection to the form of the question as not predicated upon a fact is removed, and therefore it brings directly before the Court the point which I wish to submit by way of objection. If the question is predicated upon a state of facts in the record it is clearly material; if the question is predicated upon a state of facts not in the record, we can go on guessing eternally, and it is clearly immaterial. Therefore it brings us to the direct issue that it is immaterial and irrelevant because it assumes as a predicate for the answer conditions which do not exist in this record and did not surround this sale.

THE COURT: That objection is based on your construction of the charter, as I understand it.

MR. ANDERSON: And upon the full record.

THE COURT: The answer may be taken under our general rule.

MR. ANDERSON: Will your Honor permit me to add something, because I wanted to get that definitely before you?

THE COURT: Yes.

MR. ANDERSON: This is more a reason for

supporting it than an additional suggestion. I think it becomes an important question in this case that to have divested a patent, which is nothing but an exclusive right granted by the Government, of the exclusive right, which was its character, as I indicated in my opening statement, and withdraw from it those rights and then ascertain its value, essentially assumes a confiscation of its essential elements or a destruction of its essential elements before you sell it, and that of course would not be a sale within the contemplation of the law. That is enlarging to some extent the direct point that I make.

THE COURT: I understand that contention from the standpoint of your previous objection. I will take the answer under our general rule and determine that later.

A. The value would be very largely destroyed and I should not have bid for it.

THE COURT: Are you practically through with your cross-examination?

MR. KRESEL: No, your Honor, I shall probably be another hour with this witness.

THE COURT: The time for adjournment has arrived. Colonel Anderson, at the time of an objection made by you this afternoon I probably displayed some irritation. I want to assure you, Colonel Anderson, such irritation was not due to your objection or the manner of its making. You were strictly within your rights in making an objection and the manner of its making is not open to criticism. I am sorry, sir, if my manner indicated the contrary.

MR. ANDERSON: I thank your Honor very much.

(Whereupon, at 3.05 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 26, 1923, at 8.30 o'clock A. M., Standard time.)

FIFTEENTH DAY.

Wilmington, Delaware,
June 26, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

HERMAN A. METZ resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. KRESEL:

XQ. 1206. Mr. Metz, you testified that in 1919 you paid $34,711.16 as a royalty to the Federal Trade Commission under the salvarsan license?

A. I have the figures here, yes, sir.

XQ. 1207. Will you tell me, please, when you made that payment?

A. (Witness refers to papers).

XQ. 1208. Do you think you can give us that information?

A. I am looking for it, Mr. Kresel, if you please, just a moment. I have here royalties paid that I testified from, the figures.

XQ. 1209. Do you find the item that I call your attention to?

A. What is the amount, do you say—thirty-four thousand?

XQ. 1210. $34,711.16, you testified?

A. Yes, sir, I have got here royalties on salvarsan and neosalvarsan, 1919, $34,711.16.

XQ. 1211. My question is when the payment was made, if you can give me that?

A. When the payment was made? I have got all

the receipts here. I have two receipts here from the Alien Property Custodian for about that amount, Mr. Kresel. I suppose that was taken from my books, my statement. That is $34,000 something on there, as I figure it offhand. That would probably be the same item, as I take it, with a possible difference in figures of a small amount. I presume those are the receipts for those two payments make that total. There is a slight difference there in the amount. I do not see just how much it is. There were always slight adjustments on these matters.

XQ. 1212. Subject to any further correction that you may desire to make, then, I understand your testimony to be that the sum of $34,711.16 which you paid for royalties in 1919 was paid in two instalments, for which you produce these two receipts?

A. One for salvarsan and one for neosalvarsan, I think it is, Mr. Kresel.

XQ. 1213. Now, all I am interested in are the dates. One of these receipts is dated March 7, 1919, and is for $17,807.84, is that right?

A. Yes, sir.

XQ. 1214. And the other is dated July 22, 1919, and is for $16,241.25?

A. Yes, sir; shows the 1919 payments.

XQ. 1215. You know, do you not, that the Novocain patent expired in February of this year?

A. Yes, sir.

XQ. 1216. Now, Mr. Metz, I want you to assume for the purposes of this question that the purchaser of the novocain patent, which you valued at $200,000, according to your testimony, would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that the

royalties that he was to charge would have to be reasonable royalties, that he would have been entitled to retain of all the profits made only 6 per cent upon his investment, and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country. Upon these assumptions, will you tell the Court what in your opinion those patents were worth on the 10th day of April, 1919?

Mr. Anderson: I ask leave, if your Honor please, to submit an objection to that question on the ground that it assumes facts which are not facts in this case and is not complete in the statement of the alleged evidence upon which it is predicated and that it is obviously predicated upon an erroneous construction of the evidence, and especially the charter of the defendant corporation; and therefore, in addition to the general objection which I have had placed upon the record, I wish to note this special objection.

Mr. Kresel: That is the same question that your Honor passed on just as we were adjourning yesterday. I purposely read from the question just as I put it yesterday, which your Honor allowed.

Mr. Anderson: It is probably fair to Mr. Kresel and to the Court that I should state it occurs to me that there are certain defects in the question which I think I should point out, perhaps, in addition to the contention I made yesterday, which I need not repeat now. The statements of assumed facts in the question are not drawn out by the record or especially the charter.

The Court: Is this the same question, with respect to the novocain patent——

Mr. Kresel: That I put yesterday with respect to salvarsan. Exactly the same.

MR. ANDERSON: I agree to that. My objection is really sufficient, but in view of the fact that some question may be raised to which I did not point out the specific points of my objections, I want to do that in order to make it more specific. The following objections occur to me now, without limiting my general objection.

I desire to say in the first place the purchaser of these patents was not obligated to issue nonexclusive licenses thereon to any qualified American citizen. The charter does not contain any such provision. Second, that he would have had to issue such licenses upon equal terms and equal royalties to all. I believe you inserted "reasonable" there—reasonable royalties to all. I think the evidence negatives that situation and the record does not bear out that construction. That he would have to issue a free license on all patents to the United States Government. There is no such obligation in the charter, as we contend. That he would have been entitled to retain, of all the profits made, only six per cent upon his investment. That there is nothing to that effect in the charter. The limit of the amount that can be paid upon the stock of the corporation is six per cent, but there is no limit upon the expenses which can be incurred by the corporation in the way of salaries or otherwise, and therefore a purchaser, if he had owned this corporation, if he had bought under the charter of this corporation, would have been at liberty to allow himself any amount of compensation that he saw fit for his services, and the directors of this corporation can do likewise.

Therefore, the limitation there imposed is only as to the net profits distributable upon the stock, and does not in any way affect the rights of the parties. I do not want to argue this now, but I think it is due I should state this.

The next point is that he would have been obligated to devote anything above six per cent to the advancement of the chemical industry of the country, and, as I indicated in my opening statement, while there is language of that kind in the charter, it is so utterly indefinite that it is incapable of enforcement.

THE COURT: As I understand you, you contend and urge that there is a difference between this question and what it would be if he were asked what he would give if it were bought under the terms and conditions of the charter.

MR. ANDERSON: No, sir. Of course, I would object to that as an illegal question, because he would have to construe the charter, and no layman can do that.

THE COURT: I do not mean a question——

MR. ANDERSON: I understand what you mean.

THE COURT: But your main objection, as I understand you, is that this involves a construction of the charter with which you do not agree.

MR. ANDERSON: With which I do not agree and which I claim to be entirely unjustified by the charter itself.

THE COURT: Yes.

MR. ANDERSON: And, in the second place, that it does not fully state the evidence in the case, for the reason that there is evidence here at least of one case where an exclusive agency was conferred. There is evidence here that there was an accruing income on these patents, and all of those matters should be stated; in a hypothetical question the substantial elements of the evidence must be stated.

I want to state, if your Honor please, that I have elaborated my objection to the end that the Court may understand and counsel may under-

stand its general character. I do not mean to limit it by that elaboration.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: I think it states the evidence substantially. It probably does not incorporate the fact disclosed by the evidence which was called to my attention by your last remark, namely, that there were accruing royalties on some of these patents. I do not recall offhand whether that was true with respect to novocain or not.

MR. ANDERSON: Yes, that is true.

MR. KRESEL: Your Honor will excuse me, but I was talking to someone and did not get your last remark.

THE COURT: My remark was this, Mr. Kresel: that I think the question represents substantially the fact, with this exception, which was just called to my attention by Colonel Anderson, that the evidence does not disclose, as I recall, that there were accruing royalties on novocain, which fact is not embodied in your question.

MR. KRESEL: I understand that; but there is no question about those royalties, since the purchaser did not get them. That is the reason I did not include it. I quite understand that that is the contention of the Government.

THE COURT: Have you shown that those royalties were released in any way, or merely not purchased?

MR. KRESEL: They were not only not purchased, but we have not had a chance to show that they were released. But your Honor will recall that in my opening I read to your Honor a letter from the Foundation to the Alien Property Cus-

todian, waiving any claims to those royalties whatsoever.

THE COURT: You may take the answer.

XQ. 1217. Mr. Metz, would you like me to repeat the question?

MR. ANDERSON: I do not understand your Honor's saying that this conforms to the facts as in any way expressing a view upon the charter.

THE COURT: No, I am not taking his word for that.

MR. ANDERSON: I do not want to argue that.

A. I made no calculation on that basis, Mr. Kresel.

XQ. 1218. I want you to make a calculation right now and tell the Court what, in your opinion, under those conditions stated in my question, the value of that novocain patent was?

A. Under those conditions I should not want the patent.

XQ. 1219. I did not ask you that?

A. I have no way of forming a conclusion as to what it would be worth without having all the facts, Mr. Kresel.

XQ. 1220. You stated yesterday in answer to a similar question with reference to the salvarsan and neosalvarsan patents as follows:

"The value would be very largely destroyed and I should not have bid for it."

Is that your answer to the present question?

A. Yes, sir, that would be the same answer to that question.

XQ. 1221. You testified that you were the owner of two trade-marks, a trade-mark covering salvarsan and a trade-mark covering novocain.

A. And neosalvarsan; three trade-marks.

XQ. 1222. And neosalvarsan.

A. Yes, sir.

XQ. 1223. Of course, you were not the owner; the

owner according to the papers that counsel introduced here was the Farbwerke-Hoechst?

A. Yes, my company, naturally, in which I own all the stock; now The Laboratories.

XQ. 1224. You stated that those trade-marks were seized by the Alien Property Custodian?

A. Yes, sir, they were demanded.

XQ. 1225. Is it not the fact that they were seized by the Alien Property Custodian after he had seized the stock of the Farbwerke-Hoechst Company as German property?

A. I should assume so, because he first seized—

XQ. 1226. I do not want you to assume, please.

A. It must be so, because he seized the property first.

XQ. 1227. I do not want your reasons. I simply want to know whether it is the fact.

A. To the best of my knowledge, yes.

XQ. 1228. You have testified that in your opinion the value of the salvarsan and neosalvarsan trade-marks was a million dollars?

A. Yes, sir.

XQ. 1229. A round million.

A. Yes, sir.

XQ. 1230. I want you to assume, for the purposes of this question, that the purchaser of those trade-marks would have had to issue non-exclusive licenses thereon to any qualified American manufacturer to use the same; that he would have had to issue such licenses upon equal terms and equal and reasonable royalties to all; that he would have had to issue a free license upon those trade-marks to the United States Government; that he would have been entitled to retain of all the profits made on the said trade-marks only 6 per cent upon his investment; and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country.

Upon those assumptions, will you tell the Court, what, in your opinion, those salvarsan and neosalvarsan trade-marks were worth on the 10th day of April, 1919?

MR. ANDERSON: Will your Honor permit me to renew the objection stated to the previous question of a similar character on the same grounds, in addition to the general grounds stated, and on the further grounds that the laws of the United States do not permit the licensing of a trade-mark. Therefore, the assumption is illegal.

THE COURT: I will hear you on the last objection, Mr. Kresel.

MR. KRESEL: I do not agree with counsel that there is any such law. On the contrary, not only is there no such law, but the fact is that The Chemical Foundation did license the United States Government to use those very trade-marks, as we shall show.

THE COURT: I have this difficulty: my impression with respect to the law of trade-marks was this: that it was an evidence of the good-will of the manufacturer; it was the brand, so to speak, indicating that it was manufactured by a certain person, and thus indicated a quality which was reflected in the good-will or good-will and quality, whichever way you may view it.

Possibly, this question raises more particularly one of the fundamental questions involved in this case, if my view of the law be correct, whether what was undertaken to be done by The Chemical Foundation with respect to trade-marks was not in reality a destruction and actual confiscation of the trade-marks—not of the patents but of the trade-marks; and if you care to give me the benefit of your views on that at the present time, I shall be glad to have them, Mr. Kresel.

MR. KRESEL: Well, I think your Honor is absolutely correct in the view that a trade-mark is a representation that the merchandise sold thereunder is the product of a particular manufacturer.

One of two things is true. Either these trade-marks were of no value to The Chemical Foundation, because they could not properly represent that merchandise manufactured by somebody else and using that trade-mark was the merchandise that was manufactured by the persons or concerns that owned those trade-marks originally; or else, if they used them at all, whether by license or otherwise, it was upon the theory that they stepped into the shoes, so to speak, of the former owners of the trade-mark, and therefore had a perfect right to represent that the merchandise offered under that name was the merchandise of the successor of the original owners.

What I am trying to get from this witness is what, in his opinion, the value was of those trade-marks under the conditions that I have laid down, whether those conditions were properly exercised or not. That is a matter that your Honor has to determine.

THE COURT: But is it a question that can be answered?

MR. KRESEL: I think so, sir. Indeed, I have no doubt of it.

MR. ANDERSON: May I supplement my statement, if your Honor please. In view of your Honor's inquiry and the reply of counsel, I think it is proper that I should say, without at this time undertaking to argue the question, that the Government will contend in this case that while the Government could have seized these trade-marks to prevent their being used during the war, just as it could any property or right, for its protection,

that any assignment of these trade-marks with a general obligation to give anybody the right to use them, was in effect a cancellation of the trade-mark; and therefore, the question is predicated upon a legal assumption which essentially destroys the thing which is sought to be valued and counsel is clearly asking this witness to assume a state of facts which answers itself.

Therefore, in addition to the other objections, the contention of the Government is that the counsel for the defense is asking the witness, in effect: Suppose the Government had confiscated and cancelled by act of Congress every one of the trade-marks here involved, what would you then think they were worth?

THE COURT: Is it not the law that a trade-mark can not be assigned apart from the business?

MR. KRESEL: No, your Honor. That is not my understanding.

THE COURT: If the witness can answer the question, we will put it of record, reserving the legal questions. If he can not answer it, let him say so, or let him answer it on various assumptions, so as to complete the question.

XQ. 1231. Have you the question in mind?

A. Yes, sir. I should have opposed any such transfer to an American owner of an American trade-mark.

MR. KRESEL: I ask that that be stricken out.

THE COURT: That does not answer it. Suppose we have the question repeated.

XQ. 1232. Do you want the question re-read?

A. I know the question. I understand the question.

XQ. 1233. You do know the question?

A. Yes. Assuming those were the conditions, I would not give anything for it.

XQ. 1234. Now without repeating the question at length, I ask you the same question with reference to the novocain trade-mark, and is your answer the same?

MR. ANDERSON: Your Honor will note the same objection in each case?

THE COURT: Yes, and an exception noted.

A. The same answer. It would have been destroyed.

XQ. 1235. What did the Farbwerke-Hoechst Co. pay to the Germans for the assignment of the salvarsan trade-mark?

A. They paid nothing at the time, except the continuation of the business.

XQ. 1236. They paid them nothing. That is all I want to know. What did the Farbwerke-Hoechst Company pay the Germans for the assignment of the novocain patent?

A. Same conditions. Carried it on.

XQ. 1237. Mr. Metz, what in your opinion is the value of a patent upon which the owner has to issue non-exclusive licenses?

A. Based upon earning capacity. I would have to know the earning capacity.

XQ. 1238. Has it any value?

A. Yes, sir.

XQ. 1239. In your opinion?

A. Yes, sir.

XQ. 1240. Take the salvarsan patent and the neosalvarsan patent, which I understand you are considering together——

A. Yes, sir.

XQ. 1240 (continuing). ——and tell me what in your opinion those two patents were worth on the 10th day of April, 1919, to a purchaser who would have had to issue non-exclusive licenses thereon?

A. Based upon the earnings, under those conditions, and the royalties, they were worth what I said, easily.

XQ. 1241. They were worth what?

A. The amounts I said, at least a million dollars, with their earnings under the same conditions as you stated.

XQ. 1242. Is it not a fact that in your opinion a patent on which the owner had to issue non-exclusive licenses was worth nothing at all?

A. It depends upon the income.

XQ. 1243. I am talking now about these salvarsan patents?

A. He could fix the income and it would be worth accordingly, Mr. Kresel, in my opinion.

XQ. 1244. Have you not testified that the patents which are involved here, owing to the fact that non-exclusive licenses had to be issued thereon were worth nothing?

A. I said the value had been largely diminished, but I would not have bid on them is what I said, I think.

XQ. 1245. Have you not testified that they were worth nothing?

A. I do not think I so testified, Mr. Kresel. I should like to be shown.

THE COURT: Do you mean in this case, Mr. Kresel?

MR. KRESEL: No, your Honor, before a Congressional Committee.

THE WITNESS: Oh, well——

THE COURT: Did you understand the question to be that, Mr. Metz?

THE WITNESS: I understood the question. He said I testified so. Possibly. I do not recall.

MR. ANDERSON: May I ask, to make it per-

fectly clear, whether this was before the Congressional Committee that he testified?

MR. KRESEL: The Court has asked and I answered it.

MR. ANDERSON: I did not hear it.

THE COURT: Mr. Kresel said he referred to testimony elsewhere than here, and the witness said he understood the question.

MR. ANDERSON: I see. I could hear very little of the evidence.

XQ. 1246. What is your last answer?

A. I do not recall such testimony, unless you show it to me.

XQ. 2147. Before I read you your testimony I want to ask you the same question as to a trade-mark. Have you not testified that a trade-mark which was not exclusive was worth nothing?

A. Certainly. A trade-mark is exclusive in my opinion, and must be necessarily.

XQ. 2148. Then you have so testified?

A. I assume if I was asked that question I should have answered in that way. A trade-mark is exclusive, naturally.

XQ. 2149. Now I read to you from page 879 of the record before the Sub-Committee of the Committee on Judiciary of the United States Senate. At the bottom of the page, the question by the Chairman:

"You claim to own the trade-mark of 'salvarsan?'

"MR. METZ: I claim to own the trade-mark on salvarsan—salvarsan, neosalvarsan, and novocain. They were transferred to me by the Germans before we went into the war.

"MR. GARVAN: What is the value of a non-exclusive right in a trade-mark?

"MR. METZ: Of a non-exclusive?

"MR. GARVAN: Yes.

"MR. METZ: Well, I don't believe you can

grant a license in an exclusive trade-mark. A trade-mark refers to a certain thing.

"MR. GARVAN: We can not give an exclusive license.

"MR. METZ: Well, why interfere with me, then, if you can not?

"THE CHAIRMAN: You claim exclusive ownership in the trade-mark?

"MR. METZ: I claim exclusive ownership in the trade-mark. It is worth nothng if it is not exclusive. It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: What is that?

"MR. METZ: It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: And that is practically so in respect to a patent.

"MR. METZ: Yes."

Did you give that testimony?

A. I suppose I did; yes, sir. I am quite sure I did. That is my opinion.

XQ. 2150. Mr. Metz, what in your opinion were the salvarsan and neosalvarsan patents worth on the 10th of April, 1919, if in fact some person had an exclusive license to manufacture under them in the United States?

A. Exclusive license?

XQ. 2151. Yes, sir?

A. At least five million dollars—exclusive.

XQ. 2152. I will repeat the question. What in your opinion were those two patents worth to a purchaser on the 10th day of April, 1919, if he had to take them subject to an exclusive license in the hands of someone else, to manufacture under them in the United States?

A. What do you mean, exclusive license to somebody else?

THE COURT: I am not sure that I understand your question.

MR. KRESEL: May I reframe it, sir?

THE COURT: Yes. I assume you mean an outstanding?

MR. KRESEL: Yes, sir.

THE COURT: Very well.

XQ. 2153. Did you understand that?

A. I don't know how——

XQ. 2154. Well, let me try to put it again. What in your opinion were those two patents worth on the 10th day of April, 1919, to a purchaser who had to take them subject to an outstanding license in the hands of a third party, giving that party an exclusive right to manufacture under the patents in the United States?

MR. ANDERSON: In addition to the objections already urged to this evidence, which apply to each question, I wish to add the additional objection that there is no evidence in this case that there was any exclusive license outstanding. I know that there was evidence yesterday—and I wish to say that so we may not entirely misunderstand the evidence—by Mr. Metz that he claimed an exclusive license under a verbal right from the owners in Germany before these patents were seized; but that could give no right in the United States unless it were a written assignment or license recorded in the Patent Office, and therefore there can be no such condition existing upon the evidence in this case, and there is no such evidence in the record.

THE COURT: I have a note to make inquiries about three or four matters, of which this is one: I was not sure whether the testimony had so far disclosed that the property seized by the Alien Property Custodian was, as to this patent, subject to the rights of Mr. Metz and his company. There is no evidence with respect to that, is there?

MR. ANDERSON: I will reply to that question.

As I understand it, the witness was asked yesterday if he claimed a license to use these patents, acquired prior to the war. He said he got a verbal right to manufacture in 1916 and that he did claim a license. There is in this case no evidence that such license was ever recorded or that it was in writing, which would be necessary in order to make it good against a purchaser of that patent. And therefore upon that state of facts and upon that evidence, whatever the witness may have claimed, if he wants to say subject to the claim of this witness, why, that is all right.

THE COURT: May I ask two questions?

MR. ANDERSON: Yes, sir.

THE COURT: The first is that my recollection of the testimony is that that agreement permitting Mr. Metz or his company to manufacture was in writing. I may be mistaken about that.

MR. KRESEL: I have it right here; may I read it to your Honor?

THE COURT: No. Any way, I was under that assumption. The second is, whether it was in writing or not and whether recorded or not, it is such an agreement as may be enforced against the parties though not recorded, is it not? My understanding of the recording acts, and I may be in error, is that they are for the protection of other parties than those to the document.

MR. ANDERSON: Yes. The agreement between Mr. Metz and those companies abroad might be enforced, assuming there is no Statute prohibiting the enforcement.

THE COURT: Then that would be enforceable. My next thought is this: If that is enforceable against the German owners, when the United States makes the seizure it does not get any broader or greater rights than the German owner had, I assume.

MR. ANDERSON: I would say that it would get whatever right was existing of record in that patent. The Alien Property Custodian by virtue of the seizure, I take it, becomes in legal effect a purchaser for value, and Mr. Metz, if he has not recorded any rights there, they stand in the German so far as the record is concerned.

THE COURT: That raises a question I do not want to determine now. So I will take the answer under our general rule. Mr. Kresel, will you repeat the question.

MR. KRESEL: I will ask the stenographer to read it.

(XQ. 1254 repeated as recorded above.)

A. I have not made such calculation, but it would be based upon the earning power and what had been accumulated in the way of royalties.

XQ. 1255. Would it be worth anything other than the royalties that had accumulated?

A. Yes, the continuing business thereafter and its earning capacity.

XQ. 1256. What is that?

A. The continuing business thereafter and its earning capacity.

XQ. 1257. But you do not get the question, Mr. Metz.

THE COURT: Won't you reframe that question once more, Mr. Kresel?

MR. KRESEL: Yes, sir.

XQ. 1258. My question is what in your opinion was the value of those two patents on the 10th day of April, 1919, to a purchaser who would have to take them subject to an outstanding license held by a third party, giving that third party the right to manufacture under the patents in the United States. Do you understand my question?

A. Yes.

XQ. 1259. All right. Will you answer it.

A. To me they would have been worth a million dollars easily.

XQ. 1260. I did not ask you what they were worth to you.

A. What they were worth to someone else I can not say, your Honor.

XQ. 1261. You do not know what the value would be to you?

A. I know what they would be worth to me—salvarsan and neosalvarsan.

XQ. 1262. You say they would be worth to you a million dollars?

A. Certainly, on my calculation.

XQ. 1263. I am coming to your calculation now. If you had bought the patents you could have worked under them, could you not?

A. I was working under them, yes, sir, certainly.

XQ. 1264. I did not ask you what you were doing.

A. Certainly I could have worked under them.

XQ. 1265. You could have worked under them because it was you who had the outstanding license to manufacture?

A. Yes, sir. In either case I could have worked under them.

MR. KRESEL: May I have that stricken out?

THE COURT: Yes.

THE WITNESS: Yes, sir, I could have worked under them.

XQ. 1266. Anybody that had purchased them under the conditions that I have set forth in my question could not have worked them, could he?

A. No one but the three licensees; no one else—or four licensees.

XQ. 1267. Assume, if you will, that they were bought by a person who had no license. Do you understand?

A. Yes, sir.

XQ. 1268. All right. Perhaps you misunderstood my question and I will ask it of you again. Assume that the purchase was made by a person who had no license, Federal Trade Commission or any other, and assume that there was an outstanding license giving some one else the exclusive right to manufacture in the United States, what in your opinion would have been the value of those patents on the 10th of April, 1919, to such a person?

A. That is a matter of legal—it would depend on the law and I would have to look it up first to see just what rights there were and what they would have brought in.

XQ. 1269. You would want to see the law first?

A. Certainly. I could not determine that off-hand, a matter of that kind, with so many of those questions.

XQ. 1270. What in your opinion was the value of these two patents on the 10th of April, 1919, assuming that there was an outstanding agreement between the Germans and an American citizen made before the United States went into the war, for the transfer of those patents to the American citizen?

A. Will you repeat that, Mr. Kresel?

MR. ANDERSON: That is subject to the same objection.

THE COURT: Oh, yes.

MR. KRESEL: The stenographer will read it.

(XQ. 1270 repeated as recorded above.)

A. That would depend on his rights also, as to the royalties collected and the legal questions involved; but I can not pass on that.

XQ. 1271. What do you mean "royalties collected"? What are you talking about now?

A. The royalties paid on the licenses existing up to that time. There was about $300,000 which he could claim probably.

XQ. 1272. Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the War, to transfer those patents to the American citizen?

MR. ANDERSON: It is possible, your Honor, that I do not catch the question of counsel; but in addition to the objection I have already made, I wish to add this objection: that the question is predicated upon and assumes a state of evidence which is contrary to evidence here, or, at least, an incomplete statement of evidence in another particular which I have not pointed out. The evidence is perfectly clear, your Honor, that there were licenses outstanding under the Federal Trade Commission, which were earning royalties under all these patents.

THE COURT: Neosalvarsan?

MR. ANDERSON: Salvarsan and neosalvarsan and novocain; and the amount of royalties being paid annually has been testified to by these long statements, and that that was a continuing license for the life of the patent.

Your Honor will observe, therefore, a revenue continuing, and if there were no remaining value in the patent at all, the right of a purchaser to receive those continuing royalties under that patent for the life of the patent is certainly a valuable right, because that is like the lease of a house.

THE COURT: I think I understand you.

MR. ANDERSON: In the second place, if it is an assumption that there was a grant or an effort to grant to this witness, or anyone else, by the

German interests before the seizure, of a license to use these patents exclusively, and that license or contract, which was identified but not put in evidence here, as I recall (it may have been put in), gave to the seller or the licensor, whichever it might be, a right to receive a continuing interest in the business, profits or royalties, or in any other form, then it necessarily follows that if the patent was conveyed subject to that exclusive right, assuming such was the truth, then the purchaser of that patent from the Alien Property Custodian would necessarily have received the right to whatever benefits accrued under that contract during the period of the contract. If the contract continued, the benefits would continue. If it ended, then it was no longer a burden.

Therefore I submit to your Honor that a hypothetical question asking for an opinion of the witness as an expert must set forth the facts accurately, to the end that he may predicate upon accurate facts, and not upon a partial statement of them.

THE COURT: See if I understand you, Colonel Anderson: Depending upon the different theories in the case, two hypothetical questions might be asked, I take it: (1) What would be the value of this patent on April 10, 1919, subject to an outstanding license under the terms and conditions set forth in the agreement between this witness or his company and the German owner? That would call for one answer on one basis. You could say probably, very properly, that would depend upon the terms of that agreement.

(2) What would be the value of that property on the same day, subject to four licenses which had theretofore been issued by the Trade Commission?

MR. KRESEL: And if counsel had waited, that would have been my next question.

THE COURT: Now then, of course you do not contend, I assume you do not contend—and I am asking this merely to see whether I am right in my assumption—that the Trade Commission license royalties are in and of themselves any indication of the value of the patent? These royalties paid to the Trade Commission are arbitrary royalties, are they not?

MR. ANDERSON: Five per cent.

THE COURT: As I recall the statute, they are subject to no royalties or such royalties as the Court may subsequently allow; and that is a purely arbitrary statutory royalty.

MR. ANDERSON: That involves a great many questions in this case. I take it that the presumption would be clearly in favor of the continuance of the royalty under the license issued by the Federal Trade Commission in the absence of anything else, because the presumption is always in favor of the validity of an act of an official of the Government.

May I answer your Honor's question a little more fully, because this is an important question?

THE COURT: Yes, certainly.

MR. ANDERSON: I recognize I am on an intricate and technical question of law and I do not claim to be an expert in patent law. I am old enough now to say I don't know.

In the first place, I assume that a number of hypothetical questions might be asked this witness: First, assuming that there were no licenses on this patent and it was perfectly free to be transferred without any restrictions or burdens, what would be its value?

THE COURT: That was your question.

MR. ANDERSON: No, sir. My question was, what its value was subject to the Federal Trade Commission license in every instance; because the evidence was that it was subject to that license for the life of the patent. In every instance, that was my question. I went over it last night and found out that that was true. That would be a question, where there were no limitations and where the people were free to deal with the patent as they saw fit.

Then there might be a question predicated upon the contracts which have been identified here and read from but not put in evidence. I doubt if they can be made the basis of a question unless they are put in evidence. I don't think they can.

THE COURT: I wonder if you would not be left in this difficulty. Suppose in the eventual determination of the case the facts should be found different from those assumed by you in your question; then would you have any evidence of value on the real facts?

MR. ANDERSON: Possibly, unless there was other evidence on which the value could be predicated with reasonable accuracy, I might be left without adequate evidence of value. There would be some. I will state what I stated to your Honor the other day, that in my view of the law in this case, which I can not be assured your Honor is going to accept, there is no burden on the Government to show any value in this case. I am doing it because we averred certain facts and are going to prove them if we can. When we once call for an accounting of the trustee and prove that the property came into his hands, the burden shifts to him and that is where he has to discharge his responsibility.

But aside from that law point which we will argue when we come to it, I was saying that there might be a question first on an actual free transaction.

Second, assuming that the evidence not put in the record here can be made the basis of a hypothetical question, and counsel assumes in his hypothetical question the fact that there was, whatever it was, a possible outstanding interest in the witness or anyone else derived from the German owners before the seizure, validly derived, then of course the value would depend upon the construction of that contract, the rights under that contract, the limitations upon the rights of the owner or grantor and the right of the owner or grantor to receive benefits thereunder, all of which would be a question of very delicate construction. That would be the second phase.

Assuming that right to be outstanding, we might go one step further and assume the existence of valid licenses of the Federal Trade Commission, of four licenses. Then you would be predicating on five propositions. Your Honor now sees my position?

THE COURT: Yes, but I am wondering if there is not a flaw in that theory. I do not know. But if there was an outstanding exclusive license in Mr. Metz or his companies, and then getting to a matter of law, assuming that the United States took only the rights of the Germans and did not take his rights, then you would be confronted with the proposition, would you not, that the Federal Trade Commission licenses were invalid?

MR. ANDERSON: Undoubtedly.

THE COURT: In view of these various questions of law, which we are not deciding as we go along,

I am going to permit Mr. Kresel, subject to your objection, to predicate as many questions on as many different theories as he desires.

MR. ANDERSON: Of course. I am not going to argue the matter further. There were other phases of it.

THE COURT: I did not intend to preclude you.

MR. ANDERSON: I was coming to the very phase your Honor indicated, that if there was a valid exclusive license outstanding which the Government would have to recognize then the question would come up—what if any rights the purchaser had under the Federal Trade Commission license and what right if any he had to any accrued royalties if any.

Then we come to the third proposition, whether he was estopped to raise the question of the validity of the Federal Trade Commission licenses as long as he had taken them out himself. We are getting into an extremely delicate situation and I think that this question is entirely incomplete as a basis for value.

THE COURT: No more so than yours, Mr. Anderson, is it?

MR. ANDERSON: Possibly not complete as to my own, but I had to take the evidence that was then in. All the other evidence was not in, I frankly did not know it or I would have put it in.

THE COURT: I think the only practical way of disposing of this matter is to allow Mr. Kresel to predicate his questions on the various theories he has in mind.

MR. ANDERSON: I simply wanted to point out the various difficulties, to the end that they might be overcome, if possible.

THE COURT: I thank you very much, Colonel Anderson.

XQ. 1272. (continuing) Mr. Metz, have you the question in mind or would you like to have it read to you?

A. The last question, please.

(XQ. 1272 repeated as follows) "Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the war, to transfer those patents to the American Citizen?"

A. I can not answer that question.

XQ. 1273. You can not answer it?

A. I don't believe anybody could.

XQ. 1274. You mumbled there. I can't get it.

A. I don't believe anybody could answer that question.

XQ. 1275. That is an answer. You can not give it and you do not believe anybody could. Now, I want you to assume, Mr. Metz, that on the 10th day of April, 1919, these patents were offered for sale—we are talking only, you understand, about the salvarsan and neosalvarsan patents—that they were absolutely free except for the three or four Trade Commission licenses that were then outstanding and that the sale would include and carry with it all accrued royalties up to that day. What in your opinion under those circumstances were those patents worth?

A. At least a million dollars, I have testified.

XQ. 1276. Assume that on the 10th day of April, 1919, these patents were absolutely free except for the Federal Trade Commission licenses then outstand-

ing, but that the sale did not carry with it the accrued royalties; what in your opinion were they worth on that day?

A. That would be based on the earning capacity then.

XQ. 1277. Not based. What were they worth?

A. Based on my knowledge of them, a million dollars still.

XQ. 1278. Still a million dollars?

A. Yes, sir; on the earning capacity.

XQ. 1279. Assume that on the 10th day of April, 1919, these patents, in addition to having the Federal Trade Commission licenses outstanding, were also burdened with a license granted by the Germans to an American citizen prior to our entry into the war, giving that citizen the exclusive right to manufacture thereunder in the United States; what, in your opinion, were the patents then worth under those circumstances?

MR. ANDERSON: Subject to the same objection, your Honor.

THE COURT: Oh, yes.

A. They would be worth more to me than to anybody else.

XQ. 1280. I did not ask you that.

MR. ANDERSON: I do not want to press the objection, but I want to make my position very clear here. I do not think that the question in the form asked is legal without at least having the alleged license introduced in evidence or stating what were the terms of the license, because, how can anybody estimate the value of a patent, subject to an exclusive license, without knowing the terms of the license?

The question is not fair. It is a question that can be misunderstood. It does not state the facts

and may lead the witness into an entire misunderstanding. I am frank to say I can not follow it very easily myself.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: Why is there not merit in Colonel Anderson's objection that the record does not disclose, even though the witness may know of his own knowledge, what were the terms of the agreement between the German owners and his company?

MR. KRESEL: Why, your Honor, the witness testified that he was to pay nothing to the Germans for that license.

XQ. 1281. Didn't you?

A. Yes.

THE COURT: Your assumption is based on an error of fact, is it not, Colonel Anderson?

MR. ANDERSON: No, the terms of the license do not appear. He may have said that he did not have to pay anything, but there may have been terms in the license which were very beneficial to the owners. It may have been an indeterminate license.

THE COURT: Aren't you shifting?

MR. ANDERSON: No, sir. I am not conscious of shifting.

THE COURT: I am only asking the question. If the Germans got nothing for the license, then a person buying the Germans' interest would have gotten nothing.

MR. ANDERSON: Let me suppose this case, in order to make my position clear. I do not know what the terms of these contracts are. I have not seen them. I want to have a chance to see

them before I take up the re-direct examination of this witness, if I can.

Suppose in 1916 the German owner of this patent had realized that he could not ship into the United States and could not manufacture in the United States; and, therefore, if this market was not kept open for his product and its good will preserved and the business preserved, it would be an enormous loss to him. I am assuming now these facts. Everybody knew that the war was going to end. Everybody expected it to end about every six months.

Therefore, to have preserved this business right over here may have been of enormous value and so far as anything in this record shows, the licensee may have reasserted his right in America immediately. He may have been only too glad to have somebody take his patent and use it and manufacture under it and sell under it and develop that business during the period that he could not develop it—just as a man would be only too glad to have somebody else take his house and keep it in good condition while he was abroad, without any rent; it might be worth $10,000 a year.

Therefore, there are all kinds of elements that enter into value, depending upon the surrounding facts and circumstance; and to predicate a question of this kind upon the mere fact that a money payment was not to be made, assuming that to be the case (and that does not appear of record, except the witness has testified that he was not paid any money I believe. I do not recall; but I assume it is in the case)—that being the case, that does not give us the facts upon which you can predicate such a question. I can not possibly know those facts if they are not in evi-

dence, and how can the witness know them? He might know them if they were in evidence; but he can only speak upon the record. I have merely suggested that as one of the suggestions that is apparent upon the face of the question. It is clearly an objectionable question.

THE COURT: Have you anything to say in reply?

MR. KRESEL: No, sir, I do not think I have anything to add.

THE COURT: What is the question, Mr. Stenographer?

(XQ. 1279 repeated as above recorded.)

THE COURT: By "exclusive license," of course, I shall assume that you mean a license that would run throughout the life of the patent without the payment of license fees or royalties.

MR. KRESEL: Yes, your Honor.

XQ. 1281. (continued) —and please assume that in my question, you understand?

A. That is the condition.

XQ. 1282. That was the condition?

A. That is the condition I maintained as to myself.

XQ. 1283. Of course, that is the condition of the license that you say you had, isn't that right?

A. Yes, sir.

XQ. 1284. All right, now, I want you to answer the question.

A. To me it would be worth a million dollars easily.

XQ. 1285. What would it have been worth to a person who did not hold that exclusive license, as you say you did hold it?

A. I can not judge that, Mr. Kresel.

XQ. 1286. Can give no estimate or opinion thereof?

A. It would be subject to law suits and everything else.

XQ. 1287. I did not ask you about that. Can you give any estimate of the value of the patents to anybody else other than yourself under the circumstances assumed in my question?

A. I have not considered that and I can't.

XQ. 1288. You can not?

A. I can not.

XQ. 1289. Now please assume that on the 10th day of April, 1919, these patents were absolutely free, except that there were outstanding the Federal Trade Commission licenses that you have mentioned and also there was outstanding an agreement made between the Germans and an American citizen before the United States entered into the war, to convey those patents to the American citizen. What, in your opinion, would the patents have been worth then?

A. I can only repeat the answer: To me, so much, and to others, I can not judge.

XQ. 1290. What to you?

A. At least a million dollars.

XQ. 1291. And how much to anybody else?

A. That is up to them to judge; I can't.

XQ. 1292. You can't give any answer to that?

A. I can not put myself in their position. I do not know, not without—

XQ. 1293. There you go again; I can't catch what you say.

A. Without looking up the details, I was going to say.

XQ. 1294. Looking only at the details that I have put in my question. Now please try to be a witness and not a lawyer. I mean that honestly, Mr. Metz.

A. I say I don't know that, Mr. Kresel.

XQ. 1295. You say you do not know?

A. I say I do not know.

XQ. 1296. You can not give an answer to that question?

A. Not offhand, no, sir.

XQ. 1297. You know enough about patents and manufacturing to understand the term "know-how" that is applied to patents, do you not?

A. Yes, sir; knowing how.

XQ. 1298. That means, does it not, the information and the technical knowledge to enable a person to manufacture an article that is covered by the patent?

A. The patent is supposed to convey that information to the man that knows how.

XQ. 1299. You know, of course, that patents do not?

A. Some do; some do not.

XQ. 1300. Some do and some do not; very well, we will come to that. As an example of the value of the "know-how" in connection with a patent, you have in mind, have you not, your own experience?

A. Yes, sir.

XQ. 1300. (continuing) As a manufacturer of salvarsan?

A. Yes, sir.

XQ. 1301. You had this patent available to you before the war and during the war; you were the representative of the owners of the patent before the war; you sent your brother abroad, who spent four months studying in the German factory how to make salvarsan; and yet, according to your testimony yesterday, it took you more than a year after he came back before you could produce it?

A. Because we had no machinery.

XQ. 1301. (continued) That is true, is it not?

A. Because we had no machinery, yes, sir; preparing a plant, not making salvarsan.

XQ. 1302. Now, Mr. Metz, you do not mean to say that that delay was only because it took you so long to install the machinery?

A. Largely.

XQ. 1302. (continued) In the face of the agreement that you made with Dr. Schamberg in June, 1918; do you?

A. You mean the Stieglitz agreement?

XQ. 1303. I call it the agreement with Dr. Schamberg of June, 1918?

A. I mean to say we were still hampered by machinery, yes, sir.

XQ. 1304. And that was your only hampering?

A. That was the main hampering, yes, sir.

XQ. 1305. And that you had no difficulty in producing the stock except because you did not have the machinery?

A. I say, we did produce the stock.

XQ. 1306. And that you had no difficulty in producing it except for the machinery?

A. No difficulty when we once got started, no, sir.

XQ. 1307. I am perfectly willing to leave it there. Now, as an example of the value of the "know-how" do you remember testifying that the Badische Company, for instance, had a patent on synthetic indigo and yet it took them twenty-five years and that they had to spend millions of dollars before they succeeded in producing indigo; do you remember testifying to that?

A. No, that is not true, Mr. Kresel.

XQ. 1308. It is not the truth?

A. They produced indigo, but not on a commercial scale, which is a great deal different.

XQ. 1309. Oh, that is what you mean?

A. That is what I mean, certainly, to produce it commercially.

XQ. 1310. What is the value of a patent if you can not produce it commercially?

A. That is an open question.

XQ. 1311. That is true, is it not?

A. That is an open question. From a scientific standpoint, it may be very valuable.

XQ. 1312. And you remember you testified, speaking upon this subject, that chemists know the why, but it is the practical man that knows the how?

A. Yes, sir.

XQ. 1313. And you remember testifying as follows, do you not, speaking of the licenses granted under these very patents. I am reading from page 719 of the Hearing before the Committee on Ways and Means:

> "Licenses have been obtained for some time past from the Federal Trade Commission by a number of concerns under the patents for vat colors, and yet none of them has so far been manufactured in this country. This would seem to indicate that more than the mere patents have stood in the way of manufacturing, since otherwise these vat dyes would have appeared in the market by now."

A. Yes, sir.

XQ. 1313. (continued) That was true?

A. That was true.

XQ. 1314. Of course, you know that when The Chemical Foundation bought these patents, they did not get the "know-how" from the Germans, did they?

A. Whatever was in the patent they got and nothing else.

XQ. 1315. And you know, do you not, that you could not produce under these patents?

A. I know we did in the laboratory, but had no raw material for the commercial operation.

XQ. 1316. I am not speaking particularly of salvarsan?

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment; I am not through.

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment. I am not through. I am speaking generally with reference to the patents which are here in question. Do you not know that you could not work with those patents any way?

A. I do not know. I know that we did work in the laboratory under our license for vat colors, but had not the raw material to make it commercially and could not obtain it in this country.

XQ. 1317. Did you not testify before the House Committee on Ways and Means that you could not work under these patents any way?

A. You can on some and some you can't; in a general way, certainly.

By THE COURT:

Q. 1318. The question is whether you so testified or not?

A. I assume I did, yes. I think I made that statement several times.

By MR. KRESEL:

XQ. 1319. And it was true, was it not?

A. In a general way, yes; but under specific patents it isn't.

By THE COURT:

Q. 1320. Which is true? What you just said or what you testified before the Committee?

A. That is what I testified. In a general way it

is true, I will say that again; but if you will give me a certain—

By Mr. Kresel:

XQ. 1321. Let me read you what you testified.

The Witness: (continuing): But if you will give me a certain patent; it will be different with individual patents.

XQ. 1321. (continued) I read from page 24 of this record before the Committee on Ways and Means:

"Now, Mr. Chairman,"

you said,

"there is another great danger, as I view it; the question has been raised of The Chemical Foundation taking over these patents. Well, there is safety in that. In other words, the patents have no value as such except for the purpose of keeping out infringing products."

You testified to that, did you not?

A. I did, yes, sir.

XQ. 1322. "They were simply clubs used to keep out other manufacturers."

You testified to that, did you not?

A. Many of them were, certainly.

XQ. 1323. Didn't you so testify?

A. Yes, yes, yes, it is there.

XQ. 1324. "You can not work with those patents any way."

Did you not so testify?

A. Yes.

XQ. 1325. "And there are a great many of these patents that under the patents we can allow goods that we will not make here to come in, and it is going to do it."

Did you so testify?

A. Yes.

XQ. 1326. And was that testimony true?

A. Yes, to a large extent.

XQ. 1327. And is it true today?

A. To a large extent, yes.

XQ. 1328. Well, wasn't it true as you testified? Never mind your "to a large extent."

A. Well, you have got to give me specific—

XQ. 1329. Wasn't it the truth?

A. Yes.

XQ. 1330. And isn't it true today?

A. Yes, practically true.

XQ. 1331. And did you not testify also that these patents have only a nuisance value?

A. Well, it is not only; they had a nuisance value.

XQ. 1332. Did you not say that they had only a nuisance value?

A. It is not fair to pin me down to statements made before the Committee in a general way.

XQ. 1332. (continued) Please don't argue with me.

A. I will say yes, then.

By THE COURT:

Q. 1334. Did you or did you not so testify?

A. I did at the hearing, undoubtedly.

By MR. KRESEL:

XQ. 1335. Talking about the "know-how," Mr. Metz, you remember you tried to manufacture beta-naphthol, did you not?

A. That was not patented. We did manufacture. We are manufacturing.

XQ. 1336. I did not say it was patented.

A. We are manufacturing. We are manufacturing.

XQ. 1337. You remember that when you started in to make beta-naphthol you had a man who claimed to know how to make it, do you not?

A. Yes, sir.

XQ. 1338. You know, do you not, that after working for a long time, all that you could get was a laboratory quantity, and finally gave it up?

A. Oh, I don't think that is true. We built a large plant, and one of the largest consumers—

XQ. 1339. When you started to make it, the best you could do for months was to produce laboratory quantities?

A. We had no plants; naturally. When we had a plant we made it.

XQ. 1340. Let me understand what you mean by "plant." Do you mean brick and mortar and iron and steel; or do you mean—

A. I mean—

XQ. 1340. (continued) Wait a minute. Or do you mean your machinery and the skill of people who knew how to make it?

A. By "plant" I mean brick and mortar and the machinery necessary to make it; proper machinery.

XQ. 1341. That is all you mean?

A. That is what I mean by "plant," yes, sir.

XQ. 1342. So that you say now that you were able to make beta-naphthol. You had no difficulty at all except that your building and machinery did not come in quick enough?

A. That was the main drawback, we had—

XQ. 1343. Was it the entire drawback?

A. You have got to experiment around before you get a thing finished, naturally, Mr. Kresel, with the crude materials which you get?

XQ. 1344. Then it was not only the fact that your building did not go up fast enough?

A. It was a combination of circumstances during the war, and you could not get raw material.

XQ. 1345. It is a fact, is it not, that the patents that are here involved, namely, the patents that were

conveyed by the Alien Property Custodian to The Chemical Foundation cover only 10 per cent of the dyes that were produced?

A. As to the number of dyes, yes, sir; approximately 10 per cent, I should say.

XQ. 1346. Now, what do you mean "as to the number of dyes?" You see, you qualify your answers so that I don't know where I am at with you.

A. Well, 10 per cent, whether you figure it on money value or on quantity is quite different.

XQ. 1347. Oh, no; I am not speaking of money value; I am speaking of dyes as dyes.

A. On bulk produced or as the names of dyes, the individual dyes? That is a great difference, Mr. Kresel.

XQ. 1348. Is it not a fact that they cover only 10 per cent of the bulk of dyes?

A. I can not say that, Mr. Kresel.

XQ. 1349. Is it not a fact that 90 per cent of the dyes that are produced in this country are free of patents?

A. Yes, sir, if you put it that way, yes, sir; at least 90 per cent.

XQ. 1350. Lest there be any question as to what you mean by that answer, I will read to you from your statement made to the House Committee on Ways and Means. I read from page 728 of this record. You said:

> "Over 90 per cent of the tonnage and of the individual dyes used in the United States will be free from any patent restraint within the next four years. Over 75 per cent of the dyes are now in that condition."

Was that true?

A. That is true, to the best of my knowledge and belief, Mr. Kresel; and was true then.

XQ. 1351. How high a royalty did you pay the Federal Trade Commission on novocain?

A. I will give you the figures.

XQ. 1352. I did not ask the figures; I mean the rate of royalty?

A. 5 per cent.

XQ. 1353. 5 per cent?

A. On the gross sales.

XQ. 1354. 5 per cent on the gross sales. Now, did you testify that your gross sales of novocain for 1919 were $246,295.67?

A. Let me see if that is correct. I have the figures. (Refers to papers.) How much?

XQ. 1354. (continued) $246,295.67?

A. What year did you say, Mr. Kresel, please?

XQ. 1354. (continued) 1919?

A. $246,295.67, yes, sir.

XQ. 1355. Well, that is the figure I gave you.

A. That is right, sir.

XQ. 1356. Now, I wish you would calculate 5 per cent on that and tell me the result?

A. The royalties I have here are forty-six hundred—

XQ. 1357. I did not ask you anything about that. Now please answer my question. I want you to tell me, if you can (if you can not, you can say so), what 5 per cent is on the gross sales that you have just given me for 1919?

A. (Witness makes calculation.)

MR. ANDERSON: On what page does he give his gross sales, Mr. Kresel?

MR. KRESEL: Page 1718.

XQ. 1357. (continued) Can you give us the result?

A. I am trying to get at it, Mr. Kresel; in just a moment.

XQ. 1358. I am afraid you do not figure rapidly enough to suit me.

A. No, I have got figures here. I do not know exactly how they—

XQ. 1359. I want to know if you can give us the result of that. If not, I will pass on.

A. Well, I have got the figures we paid here—

XQ. 1360. I did not ask you what you paid. I want to know if you can give me the result of 5 per cent on $246,295.67?

A. Yes, I will give it to you in just a second.

XQ. 1361. What is it?

A. Just let me have one moment.

XQ. 1362. In round figures it is about $12,000, is it not?

A. $12,000? Yes.

XQ. 1363. All right. Now, you testified that you paid as royalties on novocain to the Federal Trade Commission in 1919 $4863.74, did you not?

A. $4683.

XQ. 1364. $4863.74 is what the record shows.

A. Well, that is a mistake. It is forty-six hundred in my record here.

XQ. 1365. $4600. I will take your correction; $4683.74. Now will you explain to the Court how it is that you did not pay to the Federal Trade Commission the entire amount of royalties due, if you are right in saying that those were your sales?

A. Yes, sir. The sales include the tablets and the solutions. We only pay upon the novocain in the tablets and the solutions, which was arranged with the Commission and checked up by Mr. Buffum and Mrs. Wilson at my office. The bottles and the other products going in do not pay a royalty; only the novocain in those solutions; and we had the whole thing in our books as novocain sales, and got a separate memorandum of the stuff in there, which was checked up. I told you I have not the quantities of novocain at that time.

XQ. 1366. Are you through?

A. Yes, sir. That explains the difference.

XQ. 1367. Are you through?

A. Yes, sir.

XQ. 1368. You say now that you did not pay royalty on all your novocain sales?

A. On all the novocain sales as novocain, yes; absolutely every ounce of it, every gram of it.

XQ. 1369. You say, Mr. Metz, that you did not have to pay a royalty to the Federal Trade Commission for all your novocain sales?

A. I did not say that, Mr. Kresel.

XQ. 1370. Were all your novocain sales $246,295 in 1919?

A. They were novocain preparations and—

XQ. 1370. (continued) No, no, no, no; answer my question.

A. Not on that basis that they contained other things than the tablets; but the sales book shows the total. This is taken from our sales book.

XQ. 1371. Did you not testify on your direct that your sales of novocain in 1919 were $246,295.67?

A. Yes, but I want to modify that by saying—

XQ. 1371. (continued) Now, —

A. Yes, I did.

XQ. 1372. Do you want to change that?

A. I want to modify that to say—

XQ. 1373. All right, modify it any way you want.

A. The sales of novocain other than the novocain preparations, which are all in the same book and checked up by the representative of the Custodian and Federal Trade Commission.

XQ. 1374. How much were the sales of your novocain preparations so-called?

A. I had that straight here on novocain and I gave them to you. I will have to look that up. I can not give you the amounts. I will give you the figures.

XQ. 1374. (continuing) What do you mean you can not give me the amounts; you will give me the figures?

A. I have not got the tablets and the solutions separate. I have simply got novocain as such; but I have got the amounts in pounds and ounces, which are separate. I will have to check those back, Mr. Kresel. That escaped me; I am very sorry.

XQ. 1375. Now, Mr. Metz, I am waiting for your attention if you will give it to me.

A. I beg your pardon, Mr. Kresel; I was looking for a paper; pardon me.

XQ. 1376. The reason that you say you paid only $4683.74 in royalties to the Federal Trade Commission in 1919 was that you did not have to pay a royalty on novocain preparations; is that your answer?

A. On the products that went into them besides novocain, yes, sir. We paid for the novocain in the preparation.

XQ. 1377. I will repeat the question. Is it your claim that you did not have to pay a royalty on what you have called novocain preparations?

A. That is not my answer. My answer is—

XQ. 1378. All right, now. If that is not your answer, let me put another question: You said that your sales were $246,295.67. Is it true that those were sales of novocain?

A. Novocain and—

XQ. 1379. Yes or no?

A. Not entirely.

XQ. 1380. What is included there in that figure in addition to the novocain?

A. Novocain tablets and solutions.

XQ. 1381. Are not novocain tablets novocain?

A. There are the small bottles—

XQ. 1381. (continued) Aren't they novocain?

A. Novocain and a mixture, in some cases, of something else.

XQ. 1382. Novocain tablets that you sold and that you included in that figure, were they not novocain?

A. They contained novocain.

XQ. 1383. Were they not novocain?

A. Some were not novocain, no, sir; they contained novocain.

XQ. 1384. Under what name did you sell them?

A. "Novocain tablets E," "T," and so forth, which are different combinations.

XQ. 1385. Is it your claim that under your Federal Trade license you did not have to pay a royalty on such novocain tablets, E, T, and so on?

A. Only on the novocain in those tablets; that is my claim was my arrangement with the Commission.

XQ. 1386. You speak of an arrangement with the Commission. Was that in writing?

A. I went down and saw them.

XQ. 1387. Was it in writing?

A. I do not recall. I know they checked it up and were satisfied with those conditions.

XQ. 1388. You know, do you not, that you did not pay to the Federal Trade Commission either during 1919 or 1920, or 1921 or 1922, an amount equal to five per cent on the sales that you gave us?

A. Not on the sales, because the sales, as I say now are—

XQ. 1389. Well, not on the sales, that is the answer.

MR. KRESEL: May I have the rest beginning with "because" stricken out?

THE COURT: Motion granted.

A. Not on the sales I gave you as covering novocain.

XQ. 1390. You did not give me any sales, I beg your pardon; you gave them upon your direct examination.

A. Yes, sir.

XQ. 1391. That is all I want to know.

A. I would like to correct that, your Honor.

THE COURT: The witness says he wants to qualify something.

XQ. 1392. Certainly, now you may qualify it.

A. Those sales contain the total of the sales of the novocain, but in which are included the bottles and the ingredients that enter into the tablets, that are not novocain, and therefore require no license, and so arranged with the Federal Trade Commission. They contain, however, all the sales of novocain in every form, plus these outside propositions, which should have been deducted, and I regret that that has not been done or had not been done when the list was handed to me. But that can be done at any time and I will be glad to do it.

XQ. 1393. I asked you on last Saturday to produce your books showing the amount of your sales in 1919, 1920, 1921 and 1922. Have you them here?

A. I sent my bookkeeper back for some of them and I think he brought them here to the hotel.

XQ. 1394. Will you produce them?

A. I can bring them here.

XQ. 1395. They are not here?

A. They are in the hotel.

THE COURT: Are you going to take up the books now?

MR. KRESEL: I would like to see them, sir.

(At this point a short recess was taken at the direction of the Court.)

XQ. 1396. Before the recess, Mr. Metz, I asked you to produce your books showing the amount of your

sales during the years 1919 to 1922, inclusive. Have you those?

A. My man informs me there are 25 sales books. He did not bring all the sales books. He brought the sheets which were checked from the books.

XQ. 1397. I did not ask for sheets and I do not want anything about them. I would like to see the books.

A. I haven't got those books. They were not asked for. The sales book for 1914, the first sale of salvarsan to the Government was asked for and that I have got. I sent my man for that and these sheets he brought from the books.

XQ. 1398. If you misunderstood me on Saturday, very well. I state to you now that I want to see your books which show that you made the amount of sales that you testified to here on the direct. How long will it take you to get them?

A. Is it necessary to bring 25 sales books down here from New York to check up?

XQ. 1399. How long will it take you to get them?

A. We can send to New York to bring them down. I have the records from the books checked up, if you want those.

XQ. 1400. Can you get them here this afternoon?

A. No, not possible.

XQ. 1401. Can you get them in the morning?

A. I can send my man. I can't get them. I have the sheets here. I can't do business without my books.

XQ. 1402. Can you have them tomorrow?

A. If the Court so orders me.

THE COURT: Mr. Kresel, I am going to let you proceed in your own way, but I am wondering whether you care to inspect these sheets and then determine whether you want the books or not.

MR. KRESEL: I will do that, your Honor.

MR. ANDERSON: Would your Honor permit me to make this suggestion to counsel. The witness, I understand, has his ledgers. He has the sheets showing the royalties paid in detail, which have been checked by the representative of the Federal Trade Commission, and Mr. Buffum, who is now representing The Chemical Foundation. Would it not be a little unreasonable—I do not mean that counsel means to be unreasonable—to require the whole 25 sales books?

THE COURT: No, Colonel Anderson, but haven't we made progress? Mr. Kresel said he would examine the sheets.

MR. ANDERSON: I did not hear that.

MR. KRESEL: I am going to look at the sheets and then examine Mr. Metz.

MR. ANDERSON: I can not hear back here.

MR. KRESEL: I am going to speak louder. May I proceed, sir?

THE COURT: Yes.

XQ. 1403. You testified upon your direct examination as to the amount of profits that you made. You started in by giving your alleged profits beginning with 1913.

A. Yes, sir.

XQ. 1404. Have you in Court here the books which will show what those profits were?

A. I have the ledgers from which the Treasury reports are made.

XQ. 1405: You have the ledgers?

A. I am not a bookkeeper. My bookkeeper will account for all that, Mr. Kresel.

XQ. 1406. Please, Mr. Metz; you say you have your ledgers?

A. The ledgers are here; yes, sir.

XQ. 1407. Will you take your ledgers and point

out to me therein the entry of the profits that you made during the years for which you undertook to give figures?

A. Personally I would not recognize them in my books. My bookkeeper can do that. I am not a bookkeeper, Mr. Kresel.

XQ. 1408. Your answer is you can not do it?

A. Personally I can not. I do not think I can.

XQ. 1409. All right, that is an answer. I asked you yesterday whether you had ever met Gaston Means. Do you remember that?

A. Yes, sir.

XQ. 1410. You testified that you never saw him. Does that mean that you never spoke to him?

A. It means to the best of my knowledge I never saw the man or spoke to him. To the best of my knowledge and belief. I do not recollect ever seeing or speaking to him, ever.

XQ. 1411. And that you never wrote to him?

A. That I do not know officially, if we had a communication. I do not recall it, if I did. I do not know the man, that is all I could say. I would not know him if he was in the courtroom.

XQ. 1412. And that you never received any communication from him?

A. I do not recall any such communication, Mr. Metz, to the best of my recollection.

XQ. 1413. You testified that you had been informed that this man Means had been making an investigation of this case?

A. Newspaper reports so stated.

XQ. 1414. Did you not confer with Means about this case?

A. I never did to my recollection; no, sir, never.

XQ. 1415. Do you mean to say that you have for-

gotten whether you did confer with him about this case?

A. I mean to say if it was Means I did not know it, and to my recollection I do not know. And I could positively swear to that, Mr. Kresel, and I am under oath.

XQ. 1416. You did confer with Bennett?

A. Bennett came to see me time and again in my office. You do not call that a conference, do you?

XQ. 1417. You did talk with Bennett?

A. Bennett came to me time and again, yes, sir.

XQ. 1418. And you talked with him?

A. He talked with me and mentioned facts, but it did not interest me one bit.

XQ. 1419. And you talked with him about this case?

A. Undoubtedly, Mr. Kresel, in the course of the conversation.

MR. ANDERSON: I think you will have to say what time.

MR. KRESEL: I am coming to that.

MR. ANDERSON: But you are asking the witness, and that ought to come first.

MR. KRESEL: Please do not criticize me. If you have an objection, please raise it. I do not like counsel telling me that I should put one question ahead of another.

MR. ANDERSON: I am sorry, your Honor, if I offended counsel.

THE COURT: Colonel Anderson, there is no question before the Court now. Let it pass, and let us have the next question.

XQ. 1420. Mr. Metz, you had talks with Bennett before this suit was brought, did you not?

A. Oh, yes; he has talked to me very often.

XQ. 1421. And you met Bennett in Washington, did you not?

A. I saw him there undoubtedly when I was there and he came there.

XQ. 1422. And you saw him in your office in New York, did you not?

A. Yes, at various times.

XQ. 1423. And you gave him information with regard to The Chemical Foundation and these patents, did you not?

A. Not specifically; in conversation possibly; answered questions if he asked them.

XQ. 1424. And you talked with him about your trip abroad?

A. Undoubtedly, in general conversation, certainly.

XQ. 1425. And you told him that you had talked with your former principals about the return of these patents, did you not?

MR. ANDERSON: I shall have to object.

THE COURT: The time, place and persons will have to be specified, Mr. Kresel.

XQ. 1426. I am speaking, Mr. Metz, only of the conversations that you had prior to the bringing of this suit, which was September, 1922. Do you understand me?

THE COURT: That does not comply with the general rule, as I understand it, and does not comply with the local rule which requires, for purposes of contradiction, that you designate and specify in your question the time and place and persons present.

MR. KRESEL: All right, your Honor.

MR. ANDERSON: In addition to my general objection, I wish to renew very earnestly my objection to this examination as being entirely immaterial and irrelevant.

THE COURT: As I understand the purpose of

the examination, all of it has been either on one or two grounds, or on both, namely, the interest, the bias, the credibility of this witness, or his testimony with respect to values; and I understand this question is leading up to a matter which goes to a question of credibility.

XQ. 1427. Did you not on or about the 6th day of September, 1921, have a conference with Mr. C. Cyril Bennett and with Mr. Pickerell, as to whom you testified yesterday that he was in your employ, with reference to The Chemical Foundation and the patents here involved and the proposed suit to be brought thereon by the Government?

A. I have no recollection of such a conversation or any idea of a suit being brought.

XQ. 1428. I will ask you the same question and shall omit the statement that a suit was to be brought.

THE COURT: The question does not embody the place. The way those questions are framed here is whether the witness did not at a certain time and at a certain place, with certain persons present, make a statement, specifying the statement, or use words to that effect. We are probably very strict about those rules here; and unless that is put in more or less that form, we do not permit contradiction.

MR. KRESEL: All right, your Honor; I will observe the rule.

XQ. 1429. Did you not on or about the 6th day of September, 1921, in Washington, D. C., have a conference with Mr. C. Cyril Bennett, at which Mr. Pickerell was present, and at which time you asked Mr. Bennett to obtain for you from the files of the Alien Property Custodian information regarding the patents conveyed to The Chemical Foundation?

A. I have no such recollection. Those lists were

available. I had them in New York—the patents transferred or obtained. They were all published. I had them. There was no use asking Bennett to get them and I don't recall that I did.

THE COURT: Will you repeat the question, Mr. Kresel? I do not think the witness understood.

MR. KRESEL: I will repeat it. Indeed, I should prefer to have the stenographer repeat it, if your Honor will permit it.

(XQ. 1429 repeated as above recorded.)

A. I do not recall such a meeting.

XQ. 1430. And at that meeting, is it not a fact that Mr. Bennett stated to you that the only way he could get that information was through Senator Moses and that he would request Senator Moses to get you that information?

A. That may be true. I don't recall.

MR. ANDERSON: He has stated, sir, he did not recall any such meeting.

MR. KRESEL: He has now answered.

XQ. 1431. Look at that copy of a letter I now hand you. Do you recognize the handwriting of your employee, Mr. Pickerell, in that letter?

A. Yes, sir. That looks like Dr. Pickerell's letter.

XQ. 1432. Let me have it, please.

A. May I read it?

XQ. 1433. No, let me have it. All I asked you was to identify the handwriting.

A. (Witness returns letter to counsel.)

XQ. 1434. Now, I am going to ask you to read the letter and state whether that does not refresh your recollection about this conference that I have just been questioning you about?

A. I never saw the letter and I do not recall anything in connection with it, Mr. Kresel.

XQ. 1435. You say that that does not refresh your recollection?

A. No, not specially.

XQ. 1436. Now, don't let us misunderstand or fall between "specially" and "generally."

A. I do not recall any details connected with it; no, sir.

XQ. 1437. I didn't ask you about any details. I am asking you whether that does not refresh your recollection that you had the conference that I questioned you about, in Washington; that there were present Mr. Bennett and Mr. Pickerell, and that the statements that I embodied in my question were made?

A. There were many conferences. I do not deny it. Possibly. I don't recall, Mr. Kresel. That's all I can say—to the best of my knowledge and belief.

MR. KRESEL: I ask to have this paper marked for the present for identification.

THE COURT: Let it be so marked.

Marked Defendant's Exhibit H for Identification, 6-26-1923.

XQ. 1438. Mr. Metz, you testified yesterday that you had endorsed a note for Mr. Bennett in the sum of $5,000?

A. I think that was the amount; yes, sir.

XQ. 1439. You endorsed other notes at the Gotham National Bank, didn't you?

A. May I explain the conditions on which I endorsed them?

XQ. 1440. No, please first answer my question. Then you will explain.

A. Yes, I did.

XQ. 1441. You endorsed a note for $300,000, didn't you?

A. $300,000?

XQ. 1442. Yes.

A. Oh, no. $300,000?

XQ. 1443. Yes.

A. For who?

XQ. 1444. Now, wait a minute. Did you endorse a note for $300,000 for Mr. Bennett?

A. Certainly not—$300,000.

XQ. 1445. How much was it that you endorsed in addition to the $5,000?

A. There were various notes, as he paid off on the $5,000. I endorsed new notes as I recall it.

XQ. 1446. You mean that the total of your endorsements for Mr. Bennett was only $5,000?

A. That is my recollection, Mr. Kresel.

XQ. 1447. You mean that the maximum that you ever endorsed for him was $5,000?

A. To my recollection, yes. He had another note in a bank in Jersey when he was with the Dyers Trade Journal, that I endorsed for him, or some paper that he was on as co-endorser.

XQ. 1448. How much was that?

A. I don't recall the amount; $1200 or more.

XQ. 1449. About $1200?

A. That is my recollection. I had to pay one of them myself.

XQ. 1450. That is in addition to the $5,000?

A. Yes; and he paid off in installments.

XQ. 1451. Please don't let us travel away from the City of New York. Please confine yourself to the Gotham National Bank in New York?

A. Yes, sir.

XQ. 1452. To repeat the question, have you not endorsed for Bennett in that bank more than $5,000 of notes?

A. At one time, I don't think I did.

XQ. 1453. Did you endorse any notes for the

Manchester Union and the Manchester Leader, of Manchester, New Hampshire?

A. Not to my knowledge, no.

XQ. 1454. Or for anyone that used the proceeds of those notes for the purposes of those two publications?

A. I never heard of them before.

MR. ANDERSON: It seems to me, assuming that this evidence is admissible at all, that the limit of counsel's right to ask the question would be to specify whether he endorsed the note for specific persons; for certainly, it is rather general to ask a witness whether he endorsed a note for someone who used the proceeds for something.

THE COURT: It is very vague. Of course, it is cross-examination. I assume it is preliminary, to be followed up; is it not?

MR. KRESEL: Yes, sir.

THE COURT: If not, I do not see its value myself. If the witness recalls and is able to testify from such a general question, then a more specific one is not necessary. If he does not recall, and a more specific one is not asked, I see no benefit to be derived from answering the question.

XQ. 1455. Do you know Mr. J. A. Muehling?

A. Who?

XQ. 1456. J. A. Muehling?

A. A. J. R. Murling?

XQ. 1457. I may have his initials wrong.

A. I know such a man—A. J. R. Murling, yes.

XQ. 1458. Just for the purpose of identification, what is his business?

A. I do not know what he is doing now. He used to be with the Bayer Company years ago. He was their manager, if that is the man you mean.

XQ. 1459. No, that is not the man I mean; so we do not agree.

A. Then I do not recall, Mr. Kresel.

XQ. 1460. The man I am asking about is J. A. Muehling?

A. I do not recall such a name, Mr. Kresel.

XQ. 1461. You remember in April, 1922, you were in the United States, were you not?

A. April, 1922?

XQ. 1462. Yes.

A. I sailed in May.

XQ. 1463. You sailed away in May?

A. I went to Europe in May, 1922.

XQ. 1464. And were you in Europe in July, 1922?

A. Yes, sir.

XQ. 1465. In April, 1922, you remember visiting Mr. Bennett at his house on an occasion when he was ill?

A. Yes, sir; I recall that.

XQ. 1466. You visited him several times there, did you not?

A. Yes, sir. He was laid up for quite a while.

XQ. 1467. And you gave him money?

A. He borrowed money to pay his rent with on one occasion.

XQ. 1468. You gave him money?

A. Yes.

XQ. 1469. Now, in July, 1922, you were abroad?

A. Yes, sir.

XQ. 1470. You remember receiving a long letter from Mr. Bennett while you were abroad?

A. I think so.

XQ. 1471. Have you that letter?

A. No, sir.

XQ. 1472. Where is it?

A. I presume I destroyed it. I don't carry that kind of stuff.

XQ. 1473. Don't presume.

A. I am sure I did. I didn't bring those letters back.

XQ. 1474. That is an answer.

A. I am quite sure I destroyed it.

XQ. 1475. Will you tell the Court—and here you can make any explanation that you like—for what services you paid Bennett, for what services you endorsed notes for him, and for what services you paid notes of his in the bank?

A. A full explanation?

XQ. 1476. Go ahead; you have got the field open to you.

A. Yes, sir., Mr. Bennett was connected with the Color Trade Journal, which was the new journal of the color industry. He needed money to develop it, and the first note I understand was for that. Then he went into another journal—sort of a dry goods economist on that line—and I believe I endorsed their note for him. As I recall it, he paid off on installments the Gotham note. I had to pay one note of his that I recollect in a Jersey bank, I think over in New Jersey. Mr. Bennett was interested or had been interested with The Chemical Foundation and sent me a telegram calling for the first installment on the stock of The Chemical Foundation. Mr. Bennett was secretary of one of the dye manufacturing concerns, I forget which one, when it was organized, or shortly after it, and Mr. Bennett, in association with Dr. Matthews, had this dye journal, which was a very promising proposition, and which I was very glad to help him develop, and I think—no, he did not buy it; Merritt Matthews bought it, as I understand, bought out Bennett's interest, as I understand. Bennett was interested in the embargo, the dye embargo, which I opposed on general principles, opposed any embargo.

He conferred with Dr. Pickerell, who was formerly the chemist of the Appraiser Stores in New York, and later on, some years afterwards, I employed him as an expert on tariff matters, and in the laboratories, and he was in Washington on all those sessions. I think he conferred with Bennett and every one interested on those things. Those are the only cases I had an interest in or knew anything about. Bennett was living on Central Park West and several times came to me and said he needed money to pay his rent and other things, and I made it as a loan each time, and Bennett so understood it, and said, "As soon as I am able I will pay it back." That is the whole situation as I recall it, Mr. Kresel, and the only interest I had.

MR. KRESEL: That is all.

THE COURT: Do I understand, Mr. Kresel, that you want the production of some more books?

MR. KRESEL: I will during recess, your Honor, examine these papers.

THE COURT: You are through with cross-examination—

MR. KRESEL: Except for that.

THE COURT: Any re-direct, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE WITNESS: Will you take these now, Mr. Kresel (handing counsel papers). Your Honor, if you please, those are originals, and I would like to get them back eventually. They are my office records.

THE COURT: Mr. Metz requests, Mr. Kresel, that you return them to him at your convenience.

MR. KRESEL: Certainly.

THE WITNESS: There is no hurry, but I want to get them back eventually.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 1477. You have said that Mr. Bennett was the secretary of one of the dye manufacturers' associations. May I ask if he was Sescretary of the American Dyes Institute?

A. I do not think he was Secretary of the American Dyes Institute. I think the one prior to that. I am not certain. The records would show that, Colonel; I am not certain. I do know this, however, Colonel Anderson—

MR. KRESEL: One minute, I object to that. The question has been answered.

RDQ. 1478. Were you a member of the association of which you understood he was secretary?

A. I don't recall. This was the beginning of these transactions. I do not remember. I was a member of the Dyes Institute, I recall that.

MR. KRESEL: I object to that. The answer is "I don't remember."

THE WITNESS: I don't remember; I cannot recall. The records would show.

RDQ. 1479. You have stated on direct examination, if I recall correctly, that you were a member of the American Dyes Institute?

A. Yes, sir.

RDQ. 1480. Mr. Metz, there were produced here and presented and marked for identification several contracts between—

MR. KRESEL: Colonel Anderson, may I interrupt you a minute. I do not want to take you by surprise. I propose to offer in evidence a number of letters that I used in the cross-examination of the witness, and with them in evidence you may want to use them to re-direct him. Therefore will you permit me to interrupt you to offer them now?

MR. ANDERSON: Yes, sir.

THE COURT: There is no objection to having them offered out of order?

MR. ANDERSON: Not the slightest.

THE COURT: Very well, then.

MR. KRESEL: I offer in evidence, if your Honor please, contract between the Dermatological Research Laboratories and the Farbwerke Hoechst Company, dated December 5, 1916, as to which I questioned the witness yesterday and which he identified. I have it here in this form (handing counsel).

MR. ANDERSON: I do not object to that, though I have not looked at it. I do not object to it.

THE COURT: Admitted.

THE WITNESS: I can give you a printed copy, Mr. Kresel, if you care for it.

MR. ANDERSON: I do not object to it, except that I make the general objection to which all this evidence is subject. I do not object to it as to form.

THE COURT: It is so understood, Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit No. 5." (*See Exhibits, Vol. IV, page 2042.*)

THE WITNESS: If you want that, there is a printed copy and you can substitute that for the original (handing counsel).

MR. KRESEL: He has a printed copy and we can put that in.

MR. ANDERSON: Yes.

THE COURT: You may substitute that later if you desire.

MR. KRESEL: Very well, your Honor, I just want to make sure it is a copy.

THE COURT: You may compare it.

MR. KRESEL: If I may have the privilege, I will substitute it later.

THE WITNESS: I thought it was clearer, Mr. Kresel, that is all.

MR. KRESEL: I offer in evidence the agreement between the Dermatological Research Laboratories, Dr. Schamberg, Dr. Raiziss and Herman A. Metz, dated Philadelphia, June 8, 1918.

Received in evidence and marked "Defendant's Exhibit No. 6." (*See Exhibits, Vol. IV, page 2049.*)

MR. KRESEL: I offer in evidence a letter of James C. Sargent to the Journal of American Medical Association, printed in the issue of that magazine under date of March 30, 1918, which the witness identified.

Received in evidence and marked "Defendant's Exhibit No. 7." (*See Exhibits, Vol. IV, page 2052.*)

MR. KRESEL: I offer in evidence a letter from Dr. Hausser to Mr. Metz, dated June 20, 1913, which is printed at page 499 of the hearing before the Committee on Finance of the United States Senate, on H. R. 8078. And may I with the permission of the Court have the privilege of substituting typewritten copies of these letters which are printed in these books. There is no use putting the book in. We will give it a number now. That is the one of June 20, 1913.

Received in evidence and considered marked "Defendant's Exhibit No. 8" (to be furnished). (*See Exhibits, Vol. IV, page 2055.*)

MR. KRESEL: I offer in evidence letter from Dr. Haeuser to Mr. Metz, dated May 14, 1913, which appears at page 500 of this same volume of hearings before the Committee on Finance.

Received in evidence and considered marked "Defendant's Exhibit No. 9" (to be furnished). (*See Exhibits, Vol. IV, page 2057.*)

MR. ANDERSON: I will state as to these letters the form of the evidence is not objected to, but of course they are subject to the objections—

THE COURT: Each exhibit offered is admitted subject to your general and specific objections.

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Dr. H. F. Albert, dated May 9, 1916, and the enclosure which went with that letter. I would suggest that the letter be marked Exhibit 10 and the enclosure 10-A.

THE COURT: Let them be so marked.

Same received in evidence and marked "Defendant's Exhibits 10 and 10-A" respectively. (*See Exhibits, Vol. IV, page 2059.*)

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Joseph P. Tumulty, The White House, Washington, D. C., dated April 8, 1915, printed at pages 268 to 271 inclusive, of the volume of Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, on Senate Resolution No. 77.

Received in evidence and considered marked "Defendant's Exhibit No. 11" (to be furnished). (*See Exhibits, Vol. IV, page 2065.*)

MR. KRESEL: I will put in typewritten copies of all of these. I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated November 7, 1914, and printed at page 775 of the hearings before the Committee on Judiciary.

Received in evidence and considered marked "Defendant's Exhibit No. 12" (to be furnished). (*See Exhibits, Vol. IV, page 2072.*)

MR. KRESEL: I offer in evidence letter from one Blank to Herman A. Metz, dated August 5, 1915, and printed at page 668 of the volume of hearings before the Committee on Ways and Means of the House of Representatives on H. R. 2706.

Received in evidence and considered marked Defendant's Exhibit No. 13 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2323.*)

MR. KRESEL: I offer in evidence another letter from Blank to Herman A. Metz, dated September 28, 1915, and also printed on page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 14 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2351.*)

MR. KRESEL: I offer in evidence another letter from Blank to Herman A. Metz, dated November 12, 1915, also printed at page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 15 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2352.*)

MR. KRESEL: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated March 30, 1914, printed at page 509 of the volume containing the hearings before the Committee on Finance of the United States Senate, on H. R. 8078.

Received in evidence and considered marked Defendant's Exhibit No. 16 (to be furnished.) (*See Exhibits, Vol. IV, page 2077.*)

MR. KRESEL: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913, and printed at page 677 of the hearings before the Committee on Ways and Means of the House.

Received in evidence and considered marked Defendant's Exhibit No. 17 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2344.*)

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Honorable Robert F. Rose, Foreign Trade Adviser, Washington, D. C., dated October 23, 1914, printed at page 7766 of the hearings be-the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 18 (to be furnished). (*See Exhibits, Vol. IV, page 2080.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated June 16, 1915, and printed at page 274 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 19 (to be furnished). (*See Exhibits, Vol. IV, page 2081.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Honorable William J. Bryan, Secretary of State, Washington, D. C., dated March 6, 1915, printed at page 255 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 20 (to be furnished). (*See Exhibits, Vol. IV, page 2083.*)

MR. KRESEL: I offer in evidence a telegram from Charles A. Holder, Foreign Trade Adviser, to Mr. Metz, printed at page 779 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 21. (*See Exhibits, Vol. IV, page 2083.*)

MR. KRESEL: I offer in evidence a letter from

the Farbwerke-Hoechst Company. I can not read the name of the person who has signed it. Could you not help me with that (handing witness)?

THE WITNESS: That is J. H. Martin. That is one of my clerks.

MR. KRESEL: Signed by Farbwerke-Hoechst Company, J. H. Martin, addressed to Drs. Brown and Jack, Decatur, Illinois, April 26, 1917. That will be marked now.

Received in evidence and marked Defendant's Exhibit No. 22. (*See Exhibits, Vol. IV, page 2084.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Dr. G. W. McCoy, dated March 14, 1919, printed at page 839 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 23 (to be furnished). (*See Exhibits, Vol. IV, page 2085.*)

MR. KRESEL: I offer in evidence a letter from Edward W. Dieters to Mr. Metz, addressed as "My dear Colonel," dated October 24, 1922.

Received in evidence and marked "Defendant's Exhibit No. 24." (*See Exhibits, Vol. IV, page 2086.*)

MR. KRESEL: I offer in evidence as a separate exhibit the enclosure that came with that letter.

Received in evidence and marked "Defendant's Exhibit No. 24-A." (*See Exhibits, Vol. IV, page 2087.*)

MR. KRESEL: I offer in evidence the letter now marked Defendant's Exhibit H for identification.

Received in evidence and marked "Defendant's Exhibit No. 25." (*See Exhibits, Vol. IV, page 2088.*)

MR. KRESEL: That is all, your Honor.

THE COURT: Each is admitted subject to the general and specific objections of the Government.

MR. ANDERSON: If the Court please, there are a number of these documents of yesterday that I have not been able to examine. It is within ten minutes of the time of recess. Would it be agreeable to the Court to take the recess at this time and convene ten minutes earlier?

THE COURT: No, we will meet at the same time. We will take a recess until one o'clock Standard time.

RDQ. 1481. You identified on cross-examination an agreement of November 12, 1902, between the German firm mentioned therein and the Consolidated Color and Chemical Company, which I think you said was one of your companies, is that true?

A. Yes, that was changed in the other contracts. They were continuing contracts as to my agency for their products, that is all, that feature of it.

MR. ANDERSON: As this paper was not offered in evidence, I would like to make a reoffer. I now offer in evidence this paper which has been identified as Exhibit C for Identification, of the defendant, to be read as Plaintiff's Exhibit No. 407.

MR. KRESEL: Just our general objection, your Honor, as to materiality and relevancy.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 407." (*See Exhibits, Vol. II, page 762.*)

RDQ. 1482. There was also identified by you on yesterday another agreement dated August 4, 1905, between certain German firms and H. A. Metz and the Consolidated Color Company. This was one of the same series to which you referred?

A. Yes, sir, the continuation of the previous one.

MR. ANDERSON: We offer in evidence the agreement already identified and mentioned above, dated August 4, 1905, to be read as Plaintiff's Exhibit No. 408.

THE COURT: Admitted under the same conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 408." (*See Exhibits, Vol. II, page 782.*)

MR. ANDERSON: I should have offered preceding the former agreement, but do now offer the agreement of September 26, 1904, which was identified by the witness on yesterday and marked for identification Defendant's Exhibit E, between the German firms mentioned and Herman A. Metz and others. I now offer that agreement in evidence, to be identified and read as Plaintiff's Exhibit No. 409.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 409." (*See Exhibits, Vol. II, page 792.*)

MR. ANDERSON: The witness also identified on yesterday an agreement dated the 22nd day of July, 1912, between the German firms mentioned therein, and Herman A. Metz, H. A. Metz & Company, Victor Koechl & Company, which was marked for identification as Defendant's Exhibit F. I ask that the same be identified as Plaintiff's Exhibit No. 410.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 410." (*See Exhibits, Vol. II, page 797.*)

RDQ. 1483. Colonel Metz, you stated on yesterday that there was another agreement dated in 1913. Have you a copy of that agreement?

A. I have not. That is in the Court in Detroit. I have not got a copy.

RDQ. 1484. Have you made a search for it?

A. I did, sir, before I came down.

RDQ. 1485. By reference to one of the exhibits of the Answer, found at page 88 of the printed Answer in this cause, I find the following statement:

> "A prolonged negotiation ensued, the Germans being very reluctant to make any change. At last, in the summer of 1913, it was arranged that the 1,990 shares held by the German concern should be transferred on the books to Mr. Metz; that in return he should execute a demand promissory note without interest for the sum of $597,000; that the note should be delivered to the German company and the stock, together with a suitable transfer properly executed, should be deposited to the sole order of the German concern in a Montreal bank, as security for the note."

Can you state whether the transaction there mentioned is the matter covered by the agreement of 1913, which you have been unable to find?

MR. KRESEL: We object to the question upon the ground, first, that it is not proper re-direct; secondly upon the ground that it is immaterial and irrelevant; third, upon the ground that the instrument speaks for itself and that this witness can not interpret in the way that he is undertaking to do.

If you have a copy of the agreement, Colonel Anderson, I shall not object to your putting it in.

MR. ANDERSON: No, I have not. I can not find a copy and I can not locate the original. I will state to your Honor that we have tried to find it. The witness of course has not been able to go to New York himself to get it. We have done everything we could to find it.

In addition to that, as to the first point, I think the cross-examination opened up this entire subject and it certainly would not be fair to the witness to put in a part of his series of transactions and not put in all, that the full truth may appear.

I recognize the entire right of counsel on cross-examination to limit it to such inquiry as he thinks is appropriate to his particular position, but in the interest of re-direct, I have the right to put in evidence of the entire transaction for the consideration of the Court. If I had the agreement or a copy, I would produce it.

MR. KRESEL: Colonel, may I direct your attention to the statement of the witness on cross-examination that there was a copy of it printed in one of those records. Maybe you can locate it that way.

MR. ANDERSON: We have made a search and can not locate that contract in the record. If we can, I will be glad to produce it.

MR. KRESEL: I want to say to your Honor and Colonel Anderson, for your information, that I am pretty familiar with these records before Congressional committees and I do not remember ever having seen any copy of that instrument, nor have I ever seen the original.

MR. ANDERSON: Well, that is my experience, sir. I did not know anything about it until this matter was brought up on cross-examination.

THE COURT: Whether it is re-direct, in order that it may possibly make it unnecessary for you to recall the witness I will let you take it so far as that point is concerned under the general rule, because it is only a question as to whether there would be further examination upon it.

MR. ANDERSON: I would not object to it, sir.

THE COURT: The second point is that it is im-

material. On that ground I have found it necessary to lay down a general rule to take whatever counsel believes is material, because of the many conflicting views—that is, in view of the fact that your views vary with respect to all matters in this case except one single one. With respect to a conclusion, I think at the moment that question does call for a conclusion, Colonel Anderson. Won't you have the question read to you?

MR. ANDERSON: I think the question does call for a conclusion but I merely want to identify the character of the transaction from that evidence. I will put the question this way:

RDQ. 1486. Can you state whether the agreement of 1919 to which you refer related to the sale or alleged sale to you of the 1990 shares of stock mentioned in the paragraph of the Answer which I have read?

MR. KRESEL: I won't object.

THE COURT: You will not?

MR. KRESEL: I will not object.

A. It did, and I know where there is a copy, I think.

MR. ANDERSON: If your Honor please, I will ask this question:

RDQ. 1487. Did you have a suit in the United States District Court for the Southern District of New York in which H. A. Metz was complainant and Francis P. Garvan as Alien Property Custodian was the defendant, in which this transaction was involved?

MR. KRESEL: I object to that on the ground that it is immaterial and irrelevant; further, upon the ground that it calls for the witness's conclusion as to what was involved in the suit.

MR. ANDERSON: I think upon technical grounds, possibly the second part, that it is a conclusion, would be a good objection; but it was

merely leading up and as an inducement to something I wanted to introduce. I did not want him to say what was in the suit, but whether it related to this agreement, whether that agreement was involved.

MR. KRESEL: Further I urge the objection that it is not re-direct. In fact I understand your Honor has ruled generally—

THE COURT: No, I have ruled with respect to the other matter, because it would require a great many niceties probably to inquire whether all these are proper or not. But Colonel Anderson says he will have no objection to your re-cross examination—

MR. ANDERSON: Not the slightest.

THE COURT: With respect to any matters you want to inquire about. In that case, it seems to me the objection that it is not re-direct falls. But I think, Colonel Anderson, you are right that it does fall unless it is pure inducement to something else, and more by way of recital than a statement of fact. If that fact becomes material to your part of the case, I take it you do not ask me to accept this statement as binding?

MR. ANDERSON: I will not, sir. It could only be possible as connecting up.

THE COURT: I will take the answer and I will see what the next questions are and then determine it.

A. What was the question, Colonel, please?

(RDQ. 1487 repeated as recorded above.)

MR. ANDERSON: I will change it, the latter part, to read: "In which this contract was involved." I will put it that way.

A. Yes, sir.

MR. KRESEL: Which contract?

MR. ANDERSON: The contract of 1913 was in-

volved. I merely want to bring that out. I should have said at the beginning, though I did not, that in my re-direct examination on these points I still reserve my objections to the evidence on them opened up on cross-examination.

THE COURT: I do not understand you have waived them.

MR. KRESEL: I think we are assuming that, Colonel, from the very beginning—that you never abandon anything.

MR. ANDERSON: If your Honor please, I now wish to offer in evidence the unreported opinion of Judge Mayer, the District Judge in the case of Metz against Garvan, Alien Property Custodian, which opinion was rendered on the 2nd day of June, 1921. If it were reported, I would not offer it.

THE COURT: As tending to show what?

MR. ANDERSON: As tending to show that in the absence of all—

MR. KRESEL: Colonel, will you permit me to interrupt you?

MR. ANDERSON: Yes.

MR. KRESEL: You are misinformed as to its not being reported. It is reported.

MR. ANDERSON: In what book?

MR. KRESEL: It is reported in the Federal Reporter, of course.

MR. ANDERSON: If it is reported in the Federal Reporter, of course I do not want to offer the opinion, and I withdraw it.

MR. KRESEL: If you desire I will give you the citation.

MR. ANDERSON: I withdraw it and ask that the entire reference to that matter be stricken out.

I now ask leave to offer in evidence a certified copy of a decree of the United States District

Court for the Southern District of New York in the case of Herman A. Metz, plaintiff, against Francis P. Garvan, as Alien Property Custodian and successor in office to A. Mitchell Palmer, as defendant.

MR. KRESEL: May I see it first?

MR. ANDERSON: Certainly (handing counsel).

MR. KRESEL: Your Honor, we object to the introduction of this decree. I am not objecting to it upon the ground of incompetency and that it is a copy; but I am objecting to it upon the ground that it is immaterial and irrelevant; that a decree between Mr. Metz, and Mr. Garvan as Alien Property Custodian, is not evidence against this defendant; that it appears from the face of the instrument that it has no reference to the patents here in suit; that if the decree goes in at all I shall ask that the entire record of the case go in, so that the Court may be able to determine what relevancy or materiality there is in the decree, judging by what was being litigated in the action, and in order that the Court may have before it the complaint and the answer and any other pleadings in the case, so as to see what issues there were in the case and what evidence there was to support this decree.

I think from any point that it is viewed, this is immaterial and irrelevant and not binding upon this defendant, and we therefore object.

MR. ANDERSON: Counsel is, I concede, well within his rights in insisting that the remainder of the Court record go in. I recognize that; and if counsel desire that, then while I shall not object in any way to having the entire record here, for the purpose of making this record within some reasonable bounds, I shall withdraw this decree certainly for the present in order to have it certi-

fied. If I reach the conclusion that I must introduce it, I will do so later; but simply for the service of the record, I will withdraw that order, the opinion is sufficient.

RDQ. 1488. Colonel Metz, you were asked on cross-examination about negotiations looking to the importation of German dyestuffs in the years 1914, 1915 and 1916, and certain correspondence was introduced either to or from you bearing upon that subject. I would ask if you have any other original correspondence on that subject. If so, I will ask you to produce it.

A. Yes, sir, I have quite a number of letters from the State Department and from other officials.

RDQ. 1489. Will you let me have it?

A. (Witness hands papers.)

RDQ. 1490. I hand you what purports to be a telegram addressed to you and signed by W. J. Bryan, Secretary of State, and ask you if you can identify that as having been received by you?

A. Yes, sir.

MR. ANDERSON: We offer in evidence a telegram dated Washington, August 21, 1914, addressed to Honorable Herman A. Metz, House of Representatives, signed W. J. Bryan, Secretary of State, to be identified and read as Plaintiff's Exhibit No. 411.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 411." (*See Exhibits, Vol. II, page 813.*)

MR. ANDERSON: I will read this correspondence, as the remainder has been read, so your Honor can have the whole thing before you.

MR. KRESEL: I did not read it all, but I have no objection to your reading it.

MR. ANDERSON: You read that part that in-

terested you; so I will read this. The telegram is as follows. (Reading.)

RDQ. 1491. I hand you a telegram dated August 23, 1914——

MR. KRESEL: I will assume he will say that he received these things or sent them, whichever it is.

MR. ANDERSON: They are all original papers and we agree, without having him identify them, that they may be introduced.

MR. KRESEL: Not without having him identify them, but without putting you to the trouble of asking him. May I just see them as you offer them, to see if I have any objection.

THE COURT: Will you offer such as you desire to offer, and when you have finished, I will admit them all subject to such general and specific objection as may now or hereafter be made by the defendant.

MR. ANDERSON: Telegram dated Washington, August 23, 1914, addressed to Honorable Herman A. Metz, House of Representatives, Washington, signed "Bryan," to be identified and read in evidence as Plaintiff's Exhibit No. 412. (Reading.)

THE COURT: Admitted.

Exhibit No. 412." (*See Exhibits, Vol. II, page 814.*)

MR. ANDERSON: I offer in evidence telegram dated September 17, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read as Plaintiff's Exhibit No. 413. The telegram is as follows (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 413." (*See Exhibits, Vol. II, page 814.*)

MR. ANDERSON: I offer in evidence carbon copy of a letter dated September 18, 1914, ad-

dressed to Honorable Robert A. Lansing, Acting Secretary of State, Washington, D. C., and initialed "H. A. M."

RDQ. 1492. You signed the original of that letter, did you not?

A. Yes, sir.

MR. ANDERSON: For convenience of the record, I will put his name at the bottom of that letter, with the consent of counsel.

THE COURT: Admitted.

MR. ANDERSON: The letter reads as follows (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 414." (*See Exhibits, Vol. II, page 815.*)

MR. ANDERSON: I offer in evidence letter dated September 22, 1914, addressed to Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be identified and read as Plaintiff's Exhibit No. 415. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 415." (*See Exhibits, Vol. II, page 816.*)

MR. ANDERSON: I offer in evidence a letter from W. B. Fleming, Foreign Trade Adviser to the Department of State, to the Honorable Herman A. Metz, dated September 23, 1914, referring therein to two telegrams or drafts of telegrams attached as exhibits with the letter, all of which I ask to be identified, respectively, as Plaintiff's Exhibits Nos. 416, 416-A and 416-B. The letter is as follows (reading).

Received in evidence and marked "Plaintiff's Exhibits Nos. 416, 416-A and 416-B" respectively. (*See Exhibits, Vol. II, pages 817, 818.*)

MR. ANDERSON: I offer in evidence a telegram dated October 9, 1914, to Honorable Herman A. Metz, New York, signed Robert Lansing, Acting

Secretary of State, to be identified and read as Plaintiff's Exhibit No. 417 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 417." (*See Exhibits, Vol. II, page 819.*)

RDQ. 1493. Do you know who Mr. Poucher was?

A. Mr. Morris R. Poucher, Vice-President of Badische Company in New York, who went to Europe to meet the Matanzas.

RDQ. 1494. Do you know of your own knowledge whether Mr. Poucher was active in undertaking to secure the importation of dyestuffs?

A. He was; went over for that purpose.

MR. ANDERSON: I offer in evidence a communication dated at Rotterdam, October 10, 1914, embargo on an export of dyestuffs from Germany, signed by S. Listoe, Consul General.

Received in evidence and marked "Plaintiff's Exhibit No. 418." (*See Exhibits, Vol. II, page 820.*)

RDQ. 1495. Do you know from what place you got this record?

A. Sent to me by the State Department.

MR. ANDERSON: The communication is as follows. (Reading Plaintiff's Exhibit No. 418.)

I offer in evidence original telegram dated October 16, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 419. The telegram is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 419." (*See Exhibits, Vol. II, page 822.*)

MR. ANDERSON: I offer in evidence letter dated October 14, 1914, addressed to Honorable H. A. Metz, New York City, signed "Robert F. Rose, Foreign Trade Adviser," to be identified and read

in evidence as Plaintiff's Exhibit No. 420. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 420." (*See Exhibits, Vol. II, page 823.*)

RDQ. 1496. Who was Charles H. Burr, do you know?

A. Charles H. Burr was the counsel for the committee that took up the investigation of abuses in the dyestuff industry with Mr. A. M. Patterson and his organization.

RDQ. 1497. Was that the textile organization?

A. Later on it became the Textile Alliance.

MR. ANDERSON: I offer in evidence telegram to Honorable Herman A. Metz, dated October 27th, 1914, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 421. The telegram reads as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 421." (*See Exhibits, Vol. II, page 824.*)

MR. ANDERSON: I offer in evidence letter to Honorable Herman A. Metz, dated October 29th, 1914, signed "Robert Lansing, Acting Secretary of State," which will be found in the record of the Senate Committee Hearing on Resolution No. 77, page 775.

MR. KRESEL: No objection.

MR. ANDERSON: I will try to furnish a copy later. The letter is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence, to be considered marked "Plaintiff's Exhibit No. 422." (*See Exhibits, Vol. II, page 825.*)

RDQ. 1498. Who was Count von Bernstorff?

A. German Ambassador.

RDQ. 1499. German Ambassador to the United States?

A. Yes, sir.

MR. ANDERSON: I next offer in evidence a letter dated November 19, 1914, to the Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be marked Plaintiff's Exhibit No. 423.

Received in evidence and marked "Plaintiff's Exhibit No. 423." (Read by Mr. Anderson.) (*See Exhibits, Vol. II, page 826.*)

RDQ. 1500. The letter of November 7, 1914, that you referred to this morning, is that the letter that counsel for the defendant introduced in evidence before luncheon, do you recall?

A. I did not see what he introduced there, sir, but this is a copy of the letter I wrote to the President. There is another page missing. I presume it is among those introduced, I am not certain. There were several letters.

MR. KRESEL: The letter is in evidence, I assume.

MR. ANDERSON: I will state that it is agreed the letter is the same as the one introduced by counsel.

THE WITNESS: I am not quite certain that we had that letter, Colonel. I would like to make sure, because that is an important one in the record, under the circumstances.

MR. ANDERSON: I will verify it. I now offer in evidence a letter dated November 12, 1914, to Honorable James W. Gerard, signed by W. J. Bryan, on the letterhead of the State Department at Washington, to be read as Plaintiff's Exhibit No. 424.

Received in evidence and marked "Plaintiff's Exhibit No. 424" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 826.*)

RDQ. 1501. Mr. Metz, did you take that letter with you to Germany in 1914?

A. I did, yes, sir.

RDQ. 1502. Did you present it to Mr. Gerard, the Ambassador?

A. He handed it back to me and told me keep it as a souvenir. I did not need any introduction.

RDQ. 1503. Do you want it as a souvenir? If so, I will produce copies.

A. I should like to have all those back. I may need those again.

MR. ANDERSON: Will your Honor permit, with consent of counsel, that we substitute copies for these originals; and if so substituted, return the originals?

MR. KRESEL: No objection.

THE COURT: Copies then may be substituted.

MR. ANDERSON: I offer in evidence cable dated December 2nd, 1914, from Rome, for department. The paper is headed, "Paraphrase of text of cipher telegram received December, 1914," and is signed by Nelson Page, American Ambassador (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 425." (*See Exhibits, Vol. II, page 827.*)

RDQ. 1504. What is indanthrene?

A. Indanthrene was a patented color, or a series of patented colors, controlled by the Badische Company, now the Kuttroff, Pickhardt & Company, of which Mr. Poucher was Vice-President.

RDQ. 1505. Is that an important dyestuff material?

A. Very important dyestuff.

RDQ. 1506. Indigo was also a patented material at that time, was it not?

A. Indigo itself was not patented. The process for manufacturing synthetic indigo was patented.

RDQ. 1507. But the indanthrene was a patented product?

A. The product was patented as well as the process. It covered a number of indanthrene vat colors.

MR. ANDERSON: I offer in evidence telegram dated December 8, 1914, to H. A. Metz, New York, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 426." (*See Exhibits, Vol. II, page 829.*)

MR. ANDERSON: I next offer in evidence telegram dated January 18, 1915, to Herman A. Metz, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 427." (*See Exhibits, Vol. II, page 830.*)

MR. ANDERSON: I next offer in evidence a copy of a letter dated September 3, 1915, addressed to the Secretary of State and signed "W. G. McAdoo, Secretary," on the letterhead of the Treasury Department. I suppose the Court will take judicial notice of the fact that Mr. McAdoo was Secretary of the Treasury at that time (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 428." (*See Exhibits, Vol. II, page 830.*)

RDQ. 1508. I note that this letter which I have just read from the Secretary of the Treasury to the Secretary of State states that the Treasury Depart-

ment has requested you to deliver 500 tubes of salvarsan and 200 tubes of neosalvarsan at $2.25 per tube free of duty. Do you know whether you actually delivered those goods or not and whether they were imported?

A. I would have to refresh my memory. I assume I did, undoubtedly. If they came here, they were delivered.

MR. ANDERSON: I offer in evidence a letter dated November 8, 1915, addressed to Mr. Metz, signed by Frank L. Polk, Counsellor to the State Department.

MR. KRESEL: Are you sure that is in his official capacity?

MR. ANDERSON: I am not at all sure about it. This appears to be official. This is to be read in evidence as Plaintiff's Exhibit 429, together with a copy of a communication signed "Lansing" attached thereto, to be read in evidence as Plaintiff's Exhibit 429-A. The letter is as follows (reading).

THE COURT: Admitted.

Received in evidence and marked respectively Plaintiff's Exhibits 429 and 429-A. (*See Exhibits, Vol. II, pages 831, 832.*)

MR. ANDERSON: If your Honor please, I will merely state that the enclosure is a long telegram addressed to the American Embassy at Paris, which appears to have been sent to the American Embassy at London also, containing instructions, information and data as to the importation of salvarsan, neosalvarsan and novocain, and measures to be taken to procure the free movement thereof through the blockade.

I offer in evidence letter from the Department of State dated January 6, 1916, to Mr. Herman A. Metz, signed, "For the Secretary of State,

Alvey A. Adee, Second Assistant Secretary," together with typewritten enclosure, what appears to be a copy of telegram from American Embassy at Berlin, signed with stamp "James W. Gerard," to be identified and read in evidence as Plaintiff's Exhibits 430 and 430-A. (Reading.)

THE COURT: Admitted.

MR. ANDERSON: The telegram from Mr. Gerard merely relates to the same matter, the substance of which is stated therein.

Received in evidence and marked "Plaintiff's Exhibits 430 and 430-A," respectively. (*See Exhibits, Vol. II, pages 835, 837.*)

MR. ANDERSON: I offer in evidence a telegram dated Washington, February 8, 1916, addressed to Herman A. Metz, signed "Charles A. Holder, Foreign Trade Adviser," to be read in evidence.

MR. KRESEL: That is already in evidence. I put it in.

MR. ANDERSON: I am informed that the telegram I have just offered has already been introduced by counsel for the defendant. I will withdraw the offer in order to avoid duplication of the record.

MR. KRESEL: What is the date of it? I do not want to mislead you.

MR. ANDERSON: It is February 8, 1916, Mr. Kresel, addressed to Herman A. Metz.

MR. KRESEL: Yes, that is in as Exhibit No. 21.

MR. ANDERSON: I offer in evidence copy of the telegram or cable dated New York, February 9, 1916, addressed to Farbwerke-Hoechst, Main, Germany, signed "Herman Metz," as Plaintiff's Exhibit No. 431.

Received in evidence and marked "Plaintiff's Exhibit No. 431" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 837.*)

RDQ. 1509. I show you, Mr. Metz, an original letter from Mr. Adee, Second Assistant Secretary of State, dated February 3, 1916, in which he refers to a letter from you dated January 17, 1916. Have you that letter or a copy of it?

A. Probably, in one of my bags. It is an official letter. May I say, Colonel Anderson, that these things have been back and forth and in Court so many times that I am losing them one by one. That is the reason I want to keep them this time. They have gone astray.

XQ. 1510. You have not in the papers that you have with you a copy of the paper showing these details?

A. No.

MR. ANDERSON: Now I offer in evidence an original letter dated February 3, 1916, addressed to Honorable Herman A. Metz and signed for the Secretary of State, Alvey E. Adee, to be read in evidence as Plaintiff's Exhibit No. 432.

Received in evidence and marked "Plaintiff's Exhibit No. 432" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 838.*)

MR. ANDERSON: I offer in evidence a telegram addressed to Herman Metz, dated February 12, 1916, from Farbwerke-Hoechst, to be identified as Plaintiff's Exhibit No. 433.

Received in evidence and marked "Plaintiff's Exhibit No. 433." (*See Exhibits, Vol. II, page 839.*)

MR. ANDERSON: The telegram is as follows (reading).

I offer in evidence a letter dated February 10, 1916, to Charles A. Holder, Foreign Trade Adviser from State Department, to Herman A. Metz, to be identified as Plaintiff's Exhibit 434.

Received in evidence and marked "Plaintiff's

Exhibit No. 434." (*See Exhibits, Vol. II, page 839.*)

MR. ANDERSON: The letter is as follows (reading).

I offer in evidence letter dated February 10, 1916, to Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser to State Department.

Received in evidence and marked "Plaintiff's Exhibit No. 435." (*See Exhibits, Vol. II, page 840.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence a telegram dated Washington, February 28, 1916, to Mr. Herman A. Metz, signed Robert Lansing, Secretary of State.

Received in evidence and marked "Plaintiff's Exhibit No. 436." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence letter dated March 11, 1916, to Mr. Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser.

Received in evidence and marked "Plaintiff's Exhibit No. 437." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence letter dated March 23, 1916, to Herman A. Metz, signed Alvey A. Adee, Second Assistant Secretary.

Received in evidence and marked "Plaintiff's Exhibit No. 438." (*See Exhibits, Vol. II, page 843.*)

(Letter read by Mr. Anderson.)

MR. KRESEL: Are those all, Colonel, because I now want to put my objection on the record.

MR. ANDERSON: Yes.

MR. KRESEL: I understood your Honor to suggest that we withhold our objection and your Honor's rulings until all of them have been offered. We now object to the introduction of these letters and telegrams upon the ground that they are immaterial and irrelevant.

THE COURT: They will be received under our general rule.

RDQ. 1511. Were you or were you not in constant touch with the State Department during the period of these negotiations in 1915 and 1916?

A. Yes, sir, constantly.

RDQ. 1512. Mr. Metz, I think you have already testified you were born in the United States, have you not?

A. City of New York, yes, sir.

RDQ. 1513. You have been rather satirically called "Colonel Metz" a number of times by my friend, the counsel for the defendant. Are you entitled to that title?

A. Yes, sir; I am.

RDQ. 1514. If so, for what reason?

MR. KRESEL: I object as entirely immaterial and irrelevant whether this man is Colonel Metz or not Colonel Metz. You are the one who was calling him Colonel Metz when you put him on the witness stand. I did not know anything about it.

MR. ANDERSON: The loyalty of this witness has, in a sense, at least by inference, been assailed; and I want to show that he has been in the public service and military service of the United States.

THE COURT: You may show it, but so far as I recall, he was first called "Colonel Metz" by you.

MR. ANDERSON: He was called that by me because I was informed that was his title.

THE COURT: If you think it is material, you may show how he came by the title.

MR. ANDERSON: I do, under the circumstances of this case. Otherwise, it would be utterly immaterial what his title was.

RDQ. 1514 (continuing). Will you answer the question?

A. I served in the New York National Guard about fifteen years. I was first lieutenant, then captain. I was in the Reserves when the war started and immediately when the United States went in, I rejoined my old regiment as Lieutenant Colonel, remained Lieutenant Colonel for about three years, and was then promoted to the staff of the Adjutant General of the State of New York as full Colonel, and I am now in the Reserves since the first of last January.

RDQ. 1515. You were asked on cross-examination, whether as a member of Congress you succeeded in getting indigo put on the free list. Can you say whether or not the representatives of the textile industry demanded that indigo be put on the free list at that time.

A. The consumers did.

MR. KRESEL: One minute.

THE WITNESS: I beg your pardon.

MR. KRESEL: I object to the question on the ground that it is immaterial and irrelevant as to what the textile industry requires. Moreover, I object to it on the ground that the desires of an industry like that must be shown by documentary proof and that we can not be bound, if it is material, by the conclusion or the opinion of this witness as to what the industry desired.

MR. ANDERSON: All right. I will put the question differently.

RDQ. 1516. Do you know whether the representatives of the textile industry appeared before com-

mittees of Congress at that time and urged the putting of indigo on the free list?

MR. KRESEL: I object to that on the ground that it calls for this witness's conclusion and interpretation as to what representatives of the industry asked Congress to do. If any such appeared before any committee of Congress, there is a way of showing it by the records of the committee.

RDQ. 1517. Then I will ask you this: What was your understanding of the desires of the industry as a member of Congress?

MR. KRESEL: I object to what this witness's understanding was of the desire of the industry, whether he was a member of Congress or not.

MR. ANDERSON: If your Honor please, I put the question in three forms so as to avoid objection. But it goes deeper than that. The effort was made here to show that this witness while a member of Congress was instrumental in putting indigo upon the free list, the implication being that he was acting in the interest of German shippers. I objected then to it as immaterial and I thought it was utterly immaterial, because it had absolutely nothing to do with whether this sale of patents was valid or invalid, and we are not here trying the loyalty of a witness, as I understand it. But in view of that inquiry I regarded as both fair to the case and fair to the Government that the position of those directly interested in this industry and using this dye should be stated as the witness understood it, since his motive in Congress has been challenged.

THE COURT: Isn't that question open to objection? Would he not be required to disclose the facts rather than his understanding the facts? So far as I recall the other evidence to which you re-

fer, it was evidence by documents which were produced. I do not see how you can ask this witness what his understanding of the desire of the industry would be.

MR. ANDERSON: I have put the question in three forms, if your Honor please, to meet that. I agree there were technical objections to one or two of the questions. I think, however, the witness can testify whether representatives of the industry—and if further detail is desired, what representatives—appeared before the committees of Congress, if he knows, and what branch of the industry, whether textile or dye, and urged this action. It is not necessary that it should be in writing; these things are conducted personally. Four-fifths of the expressions of the will of the people brought to the attention of Congress are not in writing.

THE COURT: I have no objection to your disclosing the facts evidenced by your question, but I think the last question is open to the objection made by Mr. Kresel. However, I shall apply the general rule if you want me to.

MR. ANDERSON: I will ask this question to try and meet as far as I can the technical objection:

RDQ. 1518. Speaking of your own knowledge, do you know whether persons representing or claimed to represent textile institutions and industries in the United States, came to Washington at the time that indigo was put on the free list and urged that it be free from duty in the interests of American industry?

MR. KRESEL: I object to that question upon the ground hitherto urged, that this is not the proper way to prove what was requested of Congress or of a committee of Congress, by anybody. May I direct your Honor's attention to the testimony that this witness gave to which counsel is

now trying to apply this present testimony. I read from page 1757 of the record: "Did you try as a member of Congress to have indigo placed on the free list?" That was after I had introduced the two letters from the Farbwerke-Hoechst Company to this witness to do that, which he said he understood was not an instruction but a suggestion. His answer to the question was, "Yes, sir." "XQ. 249. And you succeeded? A. Yes, sir."

Now, that is the testimony.

MR. ANDERSON: All right, then I will put the question this way, since you have called my attention to the express language of the testimony:

RDQ. 1519. Why did you try to have indigo put on the free list in Congress at the time that you testified?

MR. KRESEL: I shall not object to that question.

A. Indigo was on the free list and always had been. It was considered putting it on a 10 per cent basis in the Underwood Bill, which would have raised the price that much, and there was objection by the textile people and myself on the floor of the House, and it was retained on the free list in that territory.

RDQ. 1520. Do you know whether synthetic indigo was in fact made in the United States at all at that time?

A. It was not.

RDQ. 1521. Is it a dye material which has been extensively used in the trade?

A. Most extensive of any individual dye, I presume.

RDQ. 1522. It has been testified here that the Textile Alliance was organized for the purpose of eradicating and preventing bribery and other improper practices in the textile and dye trade of the

United States. That was the effect, I think, of Mr. Patterson's testimony.

MR. KRESEL: Colonel, my recollection is that you declined to let me prove by Mr. Patterson what the purposes of his organization were. Notwithstanding that, I shall not object to your question. I simply want to correct your recollection that that was the testimony.

THE COURT: You gentlemen need not debate that now if there is no objection to the question.

MR. ANDERSON: Certainly.

RDQ. 1522 (continued). I will ask you if you were a member of or contributed to the Textile Alliance?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant.

MR. ANDERSON: I will agree with counsel, as I urged upon the Court in the cross-examination, that all of this evidence is immaterial and irrelevant; but the character, standing, loyalty, integrity and every other quality that this witness possesses, was attacked on cross-examination, and the witness was, with counsel acting well within his legal rights, and therefore I am not complaining, restrained to a very limited reply as to those questions.

While I agree that as to the issues in this case none of this evidence on cross-examination is material and relevant, or can affect it, yet I think it is not only the right of the Government, but that which is due in fairness to the witness himself, to let the facts as fully as I know them be brought out, so that the testimony of the witness may be complete for the consideration of the Court.

THE COURT: It is re-direct on the question of bias or lack of it; interest or lack of it; credibility or lack of it; and for no other purpose?

MR. ANDERSON: That is right, your Honor; and no other purpose in the world.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor, I have nothing to add to my objection. Of course, if counsel will take this witness into new fields that were neither touched upon on the direct nor on the cross, I say now that it will unnecessarily lengthen any examination of him that I have to make. I am trying, and I had hoped that Colonel Anderson would help me, to finish with this witness as speedily as possible. Now, Colonel Anderson admits that the testimony is immaterial and irrelevant. I do not think it ought to go in. I have nothing further to add to my objection, your Honor.

MR. ANDERSON: I might say, in reply to counsel, that I think the reasons which I have stated impose upon me a duty to put this evidence in, although the whole subject, in my judgment, is immaterial. I am as anxious as counsel to shorten this examination; but I do not want to shorten it at the expense of justice, either to an individual or to the case.

THE COURT: You may put it in under the general rule if you like. You of course know more about the institution of which he was a member than I do. I do not know whether he has been discredited; I am not assuming that he has or has not; and do not know whether it would have a tendency to rehabilitate him or not. You may take the answer.

RDQ. 1523. Will you answer the question?

(RDQ. 1522 read as above recorded.)

A. Yes; my firm was——

MR. KRESEL: "Yes." Now, "yes," is an answer, isn't it?

RDQ. 1524. Have you any written evidence of any such contribution?

MR. KRESEL: I object to that upon the ground that it is immaterial and irrelevant.

THE COURT: Do you not think that is going a little far?

RDQ. 1524a. I will ask you how much you contributed to the Textile Alliance?

MR. KRESEL: I object to that as immaterial and irrelevant.

THE COURT: It seems to me that that does not have any tendency on that line.

MR. ANDERSON: If your Honor will permit me—I am certainly not going to argue against your Honor's views, excepting to this extent: This man is engaged in a large business. I say again, counsel acting within his rights attacked this witness and his credibility and his character and loyalty with a severity that I do not recall having before witnessed, and the evidence already in this case justifies in my judgment the statement that this is but a part of a long-continued controversy.

Those things, unless the full facts are brought out as far as one can on sudden notice of this kind, are liable to do irreparable injury to an individual when there is no redress, because these things done in a court of justice afford no redress.

Therefore, while I deem all of that matter as immaterial, and have so stated, those questions having been gone into, in my judgment, it is my duty to the full extent that I on short notice have a chance to do so to bring out every fact in order that the whole picture may be observed, because on cross-examination a witness is not allowed to talk, he is not allowed to explain, he is not allowed

to tell his motives, he is just pinned down to practically bare statements and half proof.

THE COURT: Colonel Anderson, do not understand me to indicate that I have any objection whatsoever to your asking any question that has a tendency, however remote, to do what you indicate it is your desire to do. But the thought that I tried to express was that at the moment I failed to see how his contributions to any commercial organization would have that tendency. However, rather than discuss it, let us put it of record under our general rule.

RDQ. 1525. How much did you contribute, do you know?

A. $5,000 on two occasions, I am quite sure. I offered for three years $5,000 each, and then when the war came, I do not believe the last contribution was called for.

MR. ANDERSON: I offer in evidence letter dated October 1, 1914, from A. M. Patterson, who has been on the witness stand here, to H. A. Metz, acknowledging receipt of $5,000 as a contribution to the Dyestuffs Committee of the American Association of Woolen and Worsted Manufacturers, to be identified and read as Plaintiff's Exhibit No. 439 (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 439." (*See Exhibits, Vol. II, page 843.*)

RDQ. 1526. Do you know whether the American Association of Woolen and Worsted Manufacturers had any connection with the Textile Alliance?

A. It was one of the associate members, a constituent member of the Textile Alliance; yes, sir. Mr. Patterson was president of that organization. Here

is a previous payment, the letter I have there, which I happened to see; my letter to him.

MR. ANDERSON: I offer in evidence copy of a letter dated May 15, 1914, addressed to Mr. Patterson by Mr. Metz, to be read and identified as Plaintiff's Exhibit No. 440, in which he says (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 440." (*See Exhibits, Vol. II, page 844.*)

A. (continuing). I have the other two here, if you want them.

MR. ANDERSON: I also offer in evidence copy of letter dated October 1, 1914, from Mr. Metz to Mr. Patterson enclosing a check of contribution for $5,000 for the improvement of conditions in the textile industry, to be identified and read as Plaintiff's Exhibit No. 441 (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 441." (*See Exhibits, Vol. II, page 845.*)

RDQ. 1527. You were asked as to the price which you charged the Government of the United States for salvarsan during the years 1916, 1917 and 1918, I think it was. Can you state the prices at which you actually sold salvarsan to the United States during those years or any of them?

MR. KRESEL: That was not my question, but I do not object to your asking him that.

A. Yes, sir; I can answer that.

RDQ. 1528. If you can give that information, please give it as far as you can?

A. In 1917, August 22nd, I sold the Medical Supply Depot 2,400 ampules of 0.6 at $1.00. That was American product.

RDQ. 1529. When you say 0.6, apparently, from

your former testimony, there were two sizes to this stuff?

A. Six-tenths of a gram and four-tenths of a gram are the usual sizes used.

RDQ. 1530. When you say 0.6, you mean the larger size, and when you say 0.4, you mean the smaller size?

A. Yes, I have the samples here.

By THE COURT:

Q. 1531. Are those the samples?

A. Yes, sir. I would be very glad to have you look at them.

THE COURT: Do you want those in?

MR. ANDERSON: I do not think so, sir.

By MR. ANDERSON:

RDQ. 1532. Go ahead, Mr. Metz, with your statement.

A. Do you want further figures, Colonel?

RDQ. 1533. You said first that you sold a number of ampules of what you call 0.6 at $1.00?

A. At $1.00.

RDQ. 1534. Now go ahead and state the date of the sales, the amount and the prices, as far as you can do it?

A. On August 22, 1917, 2,400 ampules of 0.6 at $1.00 to the Medical Supply Department of the Navy.

On December 6, 1917, 1,500 ampules to the U. S. Army, Medical Supply Depot, at eighty cents. That was 0.4.

On the same date, 1,000 ampules of 0.6 at $1.00.

On the same date, 1,200 ampules of one gram at $1.50.

On the same date, 200 ampules of 0.3 grams, at $2.00.

On the 27th of November, the same year, 1,500 ampules of 0.4 at 80 cents. On the same date, 1,000

ampules of 0.6 at one dollar, 1,200 ampules of one gram at $1.50, 300 ampules of two grams each, $3.00.

On December 7, 1917, 1,500 ampules of 0.4 at 80 cents, 1,000 6's at $1.00, 1,200 1's at $1.50, 300 2's at $3.00.

On November 5, 1917, to the Navy, 1,200 6's at $1.00, and to the Army on November 12th, 1,000 6's at $1.00.

The total that year was $30,100. That was 1917, after we started manufacturing.

In 1918, on February 18, 18,000 ampules to the Army at $1.00; on March 30, 100,006 6's at $1.00.

On March 30th, 25,000 ampules of one gram at $1.50, and 2,500 of two grams at $3.00. A total of $163,000 on those contracts.

Then I have the contracts for 1922 and 1923. There were none made in 1919, practically, except small shipments to the Public Health Service, but not to the Army and Navy. 1922 and 1923 I have got, but those were the average sales, and the price came down gradually from that time down to 1922, 30 cents for the 0.6, and in March to the Army and Navy I have here 18 cents, and 15 cents for the 0.3, 15 cents, neosalvarsan, 0.2, 14 cents, 0.3, 15 cents, 0.4, 16 cents, 0.6, 18 cents. The last quotation to the Army was 13 cents a few days ago, and I do not know who got the contract, with the United States Government Public Health Service.

MR. KRESEL: Would you mind my making a suggestion?

MR. ANDERSON: No.

MR. KRESEL: You asked him first the question with regard to the price, basing it on your recollection of what my question was. My question referred to the time before we entered into the war, and as to that period he testified he was charging everybody $4.50, including the Army.

MR. ANDERSON: I am going to ask him about that in a moment. I was referring now to his sales to the Army during the war.

MR. KRESEL: I simply did not want you to be misled about what the testimony was.

MR. ANDERSON: I understood the testimony to relate to the period of the war.

RDQ. 1535. On cross-examination yesterday counsel for the defendant asked you as to sales of salvarsan or neosalvarsan to the Government of the United States at a price of $4.50. Have you any knowledge of any such sale or record thereof?

A. Yes, sir, my accountant brought me a memorandum last night that we had one sale of 1,200 ampules to the Army some time in 1915, at $4.50, the price at that time.

RDQ. 1536. Mr. Metz, do you know where you got that salvarsan from?

A. That salvarsan came from Europe, after being held up——

MR. KRESEL: I ask that the——

RDQ. 1537. All right, it came from Europe, just stop there. Do you know what it cost you to get it over here?

A. Not specifically. I know the cost was greatly increased.

RDQ. 1538. Do you know approximately what it cost to get it here?

A. We had to pay Mr. Burr 10 per cent of the invoice——

MR. KRESEL: One minute, please. The question is what it cost.

THE COURT: That is susceptible of a definite answer.

RDQ. 1539. Have you any record from which you can find out what it did cost to get it here?

A. Not the entire charge, because there were sep-

arate charges, commission for getting it through the lines, and so forth. It was materially increased over the old price. I can not give you the exact figures at this date. I have not got them.

RDQ. 1540. Was that a part of the salvarsan that was imported during the period of 1915, as shown by the correspondence which I have read between you and the State Department?

A. Yes, sir; I had to send a man to Rotterdam to get it out.

RDQ. 1541. Did you offer your plant to the Government of the United States in 1917, and if the offer is in writing, let me have it?

A. I did, sir, and I have copies of the letters here which I sent to the Government.

MR. ANDERSON: We offer in evidence copies of three letters, one addressed to Dr. W. C. Stimpson.

MR. KRESEL: There is no objection on the ground that they are copies at all.

THE COURT: They will be admitted.

MR. ANDERSON: The first is addressed to Dr. W. C. Stimpson, Assistant Surgeon General, Public Health Service, Washington, D. C., signed H. A. Metz, dated April 26, 1917; another dated June 2, 1917, addressed to Honorable Newton D. Baker, Secretary of War, signed H. A. Metz; another dated June 2, 1917, to the Honorable Josephus Daniels, Secretary of the Navy, signed H. A. Metz, the three to be read as Plaintiff's Exhibits Nos. 442, 442-A and 442-B.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 442, 442-A and 442-B." (*See Exhibits, Vol. II, pages 845, 846, 847.*)

MR. ANDERSON: In view of the evidence on this subject I am going to ask your Honor's indulgence while I read parts of these letters. The

first to the Surgeon General I will read now. (Reads Plaintiff's Exhibit No. 442.)

THE COURT: What is the date of that, Colonel?

MR. ANDERSON: April 26, 1917, just after the end of the war, sir.

(Mr. Anderson reads Plaintiff's Exhibit No. 442-A.)

MR. ANDERSON: The same letter is addressed to the Secretary of the Navy and need not be read. I offer in evidence a letter dated November 7, 1917, from the Department of Health of the City of New York, in re tests of specimens of salvarsan.

Received in evidence and marked "Plaintiff's Exhibit No. 443," and read by Mr. Anderson. (*See Exhibits, Vol. II, page 848.*)

RDQ. 1542. Mr. Metz, you have been asked about a certain agreement with Schamberg and the Dermatological Laboratories, dated June, 1916, which was put in evidence by the defendant. I would ask you whether at that time you had any manufacturing plant of your own in this country?

A. Yes, sir.

RDQ. 1543. For salvarsan?

A. Yes, sir.

RDQ. 1544. Were you making salvarsan yourself in June, 1916?

A. June, 1916?

RDQ. 1544a. Yes.

A. No, not for the market. We had not got ready for the market in June, 1916.

RDQ. 1545. At that time then you were not in fact manufacturing?

A. Not in 1916.

MR. KRESEL: Colonel, you have the date wrong.

THE WITNESS: Yes, the date is wrong.

MR. KRESEL: Will you pardon me. Don't try to do my job, too. The date of the agreement is December 5, 1916, not June; and then there is another agreement of June 8, 1919.

MR. ANDERSON: I am very much obliged to you. My notes were wrong, having been taken down hurriedly.

RDQ. 1546. To correct my statement, the first agreement is dated 1916. At that time were you actually manufacturing salvarsan commercially?

A. What date?

RDQ. 1547. December 5, 1916.

A. I had not begun to put it on the market. That was the agreement. I had been selling——

MR. KRESEL: One minute. You have answered the question.

RDQ. 1548. In the letter which I have just read, where you offered to sell to the War Department or the Surgeon General, you spoke of buying from Dr. Schamberg. Was that bought under that agreement?

A. I had been buying under that agreement before it was made for some time and that agreement finally settled the responsibility.

RDQ. 1549. There was another agreement put in here which was read to you by counsel for the defendant which was dated June, 1918. I will ask you whether you ever operated under the second agreement?

MR. KRESEL: I object to the question upon the ground that it calls for the witness's conclusion and for his interpretation of the agreement.

MR. ANDERSON: I agree that the word "operated" calls for a conclusion, but it does not call for an interpretation of the agreement.

MR. KRESEL: Of course, how can he state whether he operated under the agreement unless he interprets the agreement?

THE COURT: The question is withdrawn.

RDQ. 1550. The first paragraph of this agreement provides in effect that Dr. Schamberg and his associates, having knowledge and experience in the manufacture of this article, place their knowledge and experience at the service of H. A. Metz and his laboratory without unnecessary delay, in a sincere effort to bring his product up to the standards demanded by the Government without delay; in such a way, however, that the manufacture of this article by the Dermatological Research Laboratories will not be crippled or interfered with, and to accomplish this, Dr. Raiziss will without delay arrange his management of the manufacturing plants in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratory.

I will first ask you whether Dr. Schamberg or his associates ever went to your laboratories and did any work there after the execution of this agreement?

A. No, sir.

RDQ. 1551. I will next ask you whether Dr. Raiziss ever went to your laboratories or took any part in the management thereof after the execution of this agreement?

A. No, sir.

RDQ. 1552. I will ask you whether anything was done by Dr. Schamberg or his two associates named under that clause of the agreement at your laboratories?

A. No, sir; he was never asked.

RDQ. 1553. The second paragraph of this agreement contains two clauses. The first is that in the event that the Treaty of Peace terminated the right of the Dermatological Institute to manufacture under Federal Trade Commission license, you would agree, if you or any of your companies should have control of the German rights in any way after the Treaty of

Peace had been signed, to let them manufacture to a limited extent. Did you ever do anything under that agreement, under that clause?

A. No, sir. May I give a history of the whole agreement? Is it proper?

MR. ANDERSON: I am perfectly willing, if my friend, counsel for the defendant, will not object.

MR. KRESEL: Are you through questioning him specifically about the agreement?

MR. ANDERSON: I am now and he said he would like to give the history of it if you do not object. I don't know what he is going to say.

MR. KRESEL: I don't either.

MR. ANDERSON: Will you take the risk if I do?

MR. KRESEL: You are asking me to engage in a lottery?

MR. ANDERSON: Well, yes.

MR. KRESEL: Well, Colonel, I do not want to keep out what he wants to say, but I will say this to you: That that may make it necessary for me to call Dr. Schamberg and Dr. Raiziss and somebody else to contradict him, and I am trying to avoid that. That is the only reason that I will not consent.

THE WITNESS: May I withdraw the request?

MR. ANDERSON: Under the objection of counsel, of course, it would not be competent for the witness to state what took place prior to the making of the agreement, and therefore I will not try to get it in because I think we would be stopped almost at once, going outside of the terms of a written agreement.

MR. KRESEL: Colonel, you are learning, I will say that.

MR. ANDERSON: No, I think I learned that some years ago.

THE COURT: It is past three o'clock, and if there is going to be a discussion on immaterial matters, we will take an adjournment. If not, we can go ahead and try to finish with this witness.

MR. ANDERSON: It will take me another hour with this witness.

THE COURT: Do you want to go ahead for another hour?

MR. ANDERSON: I would prefer not. We are going to be in this case three weeks more, judging from the way we are going. I can not stand it physically. I would like to do it.

THE COURT: If there is any danger of that, I am going to ask counsel to lengthen the Court day from five hours to seven. We will begin earlier or stay later.

MR. ANDERSON: All I can say is that I hope to rest the Government's case tomorrow. I am prepared to rest tomorrow, and I think I can.

THE COURT: I do not want to ask you in weather like this to make it longer, if you can possibly avoid it.

MR. KRESEL: Before your Honor takes an adjournment, you will recall that before recess Mr. Metz handed me some documents, with the idea of my being able to determine whether I required the production of his books or whether these will be satisfactory.

These documents do not include any information with regard to novocain, which was the only product that I was questioning him about. These are solely documents relating to salvarsan. Therefore, they certainly do not answer the purpose.

THE COURT: And they are now returned to the witness?

MR. KRESEL: And are now returned to the witness.

MR. ANDERSON: I will take it up with the witness after adjournment, if your Honor please, and if it is possible to get any record such as counsel have called for here tomorrow morning, I will try to get it done.

THE COURT: We will take an adjournment until 8.30 tomorrow morning.

(Whereupon, at 3.10 o'clock, Standard Time, an adjournment was taken until Wednesday, June 27th, 1923, at 8.30 o'clock A. M., Standard Time.)

SIXTEENTH DAY.

Wilmington, Delaware,
June 27th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

HERMAN A. METZ, resumed the stand.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 1554. Yesterday, at the time of adjournment, I was asking you what if anything was done under the so-called Schamberg agreement of June 8th, 1918. The third paragraph of the agreement is to the effect that in the event the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the

war, in the event that Mr. Metz is not in a position to carry out the guarantee to The Laboratories of their right to manufacture, that you would pay to The Laboratories a royalty on the manufacture of salvarsan under the license from the Federal Trade Commission for the duration of the war. Did you ever pay any royalties under that agreement?

A. No, sir.

RDQ. 1555. Then according to your testimony, nothing was ever done under that agreement?

A. Nothing, sir.

RDQ. 1556. Why not, Mr. Metz?

A. Didn't need their assistance; didn't demand it; didn't desire it and didn't use it.

RDQ. 1557. Under the agreement of December 5th, 1916, you were asked by counsel on cross-examination as to the provision in the agreement to the effect that you would not prosecute the Dermatological Institute for having manufactured, under the patents, salvarsan and neosalvarsan. You never did prosecute them, did you?

A. No, sir; I agreed not to.

RDQ. 1558. Why did you agree not to prosecute them?

A. I was willing to sacrifice—

MR. KRESEL: One minute, please. I object to that.

MR. ANDERSON: I think it is perfectly legitimate to ask him why he did not prosecute them.

MR. KRESEL: No, I do not agree with you. There is a written agreement between the parties that speaks for itself.

MR. ANDERSON: But I think he has a right to say why he did not prosecute.

THE COURT: I am not sure that I have the facts leading up to this question entirely clear in

my mind. You are referring now to the agreement of June, 1918?

MR. ANDERSON: No, sir; the agreement of 1916. I will put another question, which will probably make it clear.

RDQ. 1559. Counsel asked you something about your authority to sue in the prosecution of any alleged infringements of the rights of the then German owners of these patents, and I think he asked for the production of a power of attorney, or your authority.

MR. KRESEL: I did not ask him that, Colonel. He did say that he had some power of attorney, and if this is it and you want it put in, let me read it. I do not know that I will have any objection.

MR. ANDERSON: All right.

MR. KRESEL: Do you want to offer that?

MR. ANDERSON: Yes, I will offer it.

MR. KRESEL: Except as to materiality and relevancy, your Honor, we have no further objection.

MR. ANDERSON: I offer in evidence an original power of attorney dated the 16th day of December, 1911, running from the German house which has been shown in evidence to be the owner of these patents, to the witness, the contents of which speak for themselves; to be read as Plaintiff's Exhibit No. 444; and would ask leave to withdraw this paper and substitute a copy if desired.

MR. KRESEL: There is no objection to that.

THE COURT: Admitted subject to the general and specific objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 444." (*See Exhibits, Vol. II, page 849.*)

THE COURT: Now, was the other question withdrawn, or will you restate it?

MR. ANDERSON: I will bring it up again.

RDQ. 1560. Now, you did not in fact sue the Der-

matological Institute for infringement, as the representative of the German house, did you?

A. No, sir.

RDQ. 1561. They were manufacturing in 1916?

A. Yes, sir.

RDQ. 1562. May I ask why you did not sue to enforce the rights of the German house?

MR. KRESEL: To that, your Honor, we object upon the ground that it is immaterial and irrelevant.

THE COURT: I wonder if I may ask two or three questions which will help me on that; but I hope these questions can be answered without a discussion.

MR. ANDERSON: Yes, sir; I will do that.

THE COURT: Because it seems to me that that is immaterial. It seems to me that many other facts are necessarily immaterial and unavoidably immaterial, and I mention these facts now so that if, perchance, my views happen to be more or less correct, we may eliminate them and in so doing save time on such matters as are clearly immaterial.

If I understand the testimony of yesterday and its value—and understand me, Colonel Anderson, I am not at any time during this trial unless I make it clear beyond all question definitely ruling on any issues of this case; for instance, on the power of the President to do what was done—I am not passing on that. I have read the Act once. I have not attempted to make any study of the Act. That is a matter lying at the foundation of the suit and I am not going to try and determine that until the whole case is in. But as I see it at the minute, it seems to me that the testimony of yesterday clearly presents these thoughts: First, you deny the contention of the

defendant that the terms and conditions of the acquisition of the patents and trade-marks by The Chemical Foundation were such as contended by the defendant; second, if I understand your testimony—and I am asking this to get your help—you do not deny that if those terms and conditions were as contended for by the defendant, that the price paid by The Chemical Foundation for the property it acquired was at all inadequate.

If I am right in those two statements, I take it that the only questions that are open here really are, the ascertainment of the terms and conditions under which the patent rights, trademark rights and other rights acquired by The Chemical Foundation were so acquired by it, and if they were in fact and in law acquired under the terms and conditions contended for by the defendant, then the only question remaining is the power of the Executive Department to make such sale under those terms and conditions.

I take it you are not suggesting that the Judicial Department has power to review the acts, the discretion or wisdom of the acts, of the Executive Department, if acts there were, with respect to the dye industry, particularly in view of the American situation pertaining thereto disclosed and demonstrated by the documentary evidence introduced yesterday afternoon. Do I make myself at all clear, Colonel?

MR. ANDERSON: I think you do. But I think your Honor has misunderstood my position, which was not unnatural in this confusion. I am going now to just answer it and not going to argue it at all.

THE COURT: Yes, if you will.

MR. ANDERSON: In the first place, your Honor is right in your first impression. I do differ funda-

mentally from counsel as to the terms and conditions which surrounded this sale as disclosed by the record and as to the rights transferred thereby. I think we differ on every point in that respect.

I object most earnestly and shall at all times most earnestly, unless there is a very material change in anything I understand in this case, insist that, if every condition surrounding this sale which they insisted upon were true, that the price paid was wholly, utterly and shockingly inadequate.

THE COURT: Will you not point out to me now the testimony on which you are going to base that? I do not mean to argue.

MR. ANDERSON: I am going to base it chiefly on the actual earnings of the property at the time of the sale. But I will go further. I do not want to argue the matter now. There is a great deal in the record that has not been brought to your Honor's attention specifically.

I will go further in that connection and say, as I have indicated in a number of instances, that while the Government has introduced evidence of the earning power of this property at the time of the transfer, which in our judgment is conclusive on the question of inadequacy, aside from the actual admissions on the record by the parties themselves of the arbitrary character of the arrangement as to price, yet the Government was under no legal obligation to do that.

MR. KRESEL: To do what?

MR. ANDERSON: To introduce any evidence of value on its prima facie case in view of the fact that under principles of law so familiar that they are elementary, once it is shown that property which has come into the hands of the trustee has

been disposed of, the burden shifts upon the trustee.

THE COURT: Do you mean to the purchaser?

MR. ANDERSON: The burden is shifted to the trustee, in this case to the purchaser, and the purchaser takes notice of the power of the trustee and the duties of the trustee.

In other words, I am not going to argue, but am merely trying to state my position. If I were to be trustee for A, with power of sale, and A and B bought from me trust property, in the absence of any provisions in the trust relieving me from any responsibility—and there is none here—he would take subject to my powers of sale and with knowledge of my trust position and with the responsibilities attached to that position. He can get no higher position in that connection than a trustee himself takes under all the burdens of a trustee, and becomes a constructive trustee himself if there is any defect in the sale. That, of course, is elementary law.

In the third place, while I have introduced evidence here of various theories because I can not tell what view your Honor or any other Court will take, it is my contention that the question of value in this case is utterly and absolutely immaterial; because it is so well settled by the decisions of the Supreme Court of the United States and the English courts as to require no discussion, that when a man is both seller and buyer, the question of consideration does not enter. He might have paid more than it is worth and the sale is invalid. If that principle of law is adopted in this case, then the question of consideration becomes utterly without value.

Now, I outlined those positions to you, so that your Honor might get a reply to your question

as full and as frank as I could make it at this time in connection with these questions of value; and in the fourth place, that if our position is correct in any of those respects, then the sale constitutes a confiscation which no one in the Government had the power to make.

THE COURT: Outside of Congress.

MR. ANDERSON: Outside of Congress. I mean in the Executive Department.

THE COURT: The question is whether the Congress did exercise the power and authorize the Executive Department to execute that power.

MR. ANDERSON: Yes. And of course, I would take the position there that Congress could not confer a power upon the Executive Department.

THE COURT: You need not debate that.

MR. ANDERSON: No, sir, of course not.

Then I would say further in connection with the question of confiscation of property that all of the conditions of sale enter into that, and that becomes a question of a very careful analysis of the record. Therefore, this evidence that I am now offering goes really to the position taken by the defendant as to certain conditions surrounding this sale, a point which I assume they will argue, that the value of this property at that time was depleted. It also goes to the fact of the very indefinite and intangible thing which we call an attack upon the credibility of a witness. This particular question I took to be directed more to that than anything else, on cross-examination, and I am only going to ask one or two questions.

I am not very clear, I am afraid, this morning, because sometimes you think clearly and sometimes you do not, and I am afraid I am not this morning; but I have tried to make my answers as clear to your Honor as I could, and as brief. I

do not mean that those answers are in any sense complete on the record.

THE COURT: It seemed to me that it was necessary for me to make those inquiries, particularly in view of the testimony of yesterday, because I had understood certain answers with respect to values if the conditions existed, which seemed to me antagonistic to any other conclusion. I just wanted to get your views. Do you want to be heard at all, Mr. Kresel?

MR. KRESEL: No, your Honor, I do not think so.

THE COURT: Then I shall take the answer under the general rule.

(RDQ. 1562 repeated as above recorded.)

A. I was anxious to keep the public supplied with a satisfactory product, and was willing to waive all my rights and interests for that purpose, and sacrifice them if necessary.

RDQ. 1563. You were asked on cross-examination if you did not write to or obtain from various textile interests and dye manufacturers samples of the dyes which they used some time, I think, in 1916, possibly during the war; I do not remember the date.

A. 1913.

RDQ. 1563. (Continued) 1913; and I think you said that you did—

MR. KRESEL: Pardon me a minute. I did not give that question. May I have it repeated?

(RDQ. 1563 repeated as above recorded.)

MR. KRESEL: Colonel, I do not recall any such question.

MR. ANDERSON: I have a note of that here.

THE COURT: I do not recall that inquiry, Colonel Anderson.

MR. KRESEL: I do not even know what it is that

you are referring to or what the witness has in mind.

MR. ANDERSON: I have a note here that the question was asked.

MR. KRESEL: I will not object to your bringing it out; but I am simply calling to your attention that there was no such question that I put to the witness, or any answer on that line at all.

MR. ANDERSON: May I have the question answered? I have a note here that such a question was asked. May I have the question answered with the understanding that if there was no evidence brought out on cross-examination on that subject, the evidence will be disregarded so far as we are concerned?

THE COURT: I do not know whether I can do that, Colonel Anderson, because you may open up a field—

MR. ANDERSON: For re-direct?

THE COURT: Yes.

MR. ANDERSON: Then for the present I withdraw the question because I do not want to go into something that has not been gone into, on assurance of counsel that he does not recall the question. I may have misunderstood the witness.

RDQ. 1564. Mr. Metz, you were asked on cross-examination something about getting a transfer for salvarsan patents, neosalvarsan, and so forth, and you were asked a great many questions about the exclusive right which you claimed to use these patents. Did you ever get any transfer of these patents?

MR. KRESEL: One minute, please. Of course, that is asking for a conclusion. Do you mean whether he got a writing?

RDQ. 1565. I will ask you if you ever obtained any written assignment of these patents from the German house?

MR. KRESEL: In writing.

A. An assignment, no, sir.

RDQ. 1566. You testified on cross-examination that you claimed an exclusive right to manufacture under these patents based on some agreement of 1916?

A. Yes, sir.

RDQ. 1566-a. And that that was a verbal agreement so far as I recall?

MR. KRESEL: One minute, please. On the contrary, the witness testified that it was in writing.

MR. ANDERSON: But he said he did not have it.

MR. KRESEL: He testified that it was in writing.

THE COURT: Your own witness, Colonel Anderson, said your question suggested the answer.

MR. ANDERSON: I will withdraw it on that ground, your Honor.

RDQ. 1567. Have you any agreement of 1916 with your German house in regard to these patents in writing?

MR. KRESEL: He did not give the date, you will recall.

MR. ANDERSON: I beg pardon; the record clearly shows that he gave that.

MR. KRESEL: No, you are in error. He did not give the date. If you like, I will refer you to the record.

MR. ANDERSON: All right.

RDQ. 1568. Did you have any agreement with the German house made in 1916 with respect to these patents?

A. My brother made an agreement—

MR. KRESEL: One minute, please; I object to that. I think the witness should answer either yes or no.

THE COURT: You may answer yes, or no, and then Colonel Anderson may bring out the other

facts from you by specific questions to which Mr. Kresel will have an opportunity to object. Can you answer that yes or no?

(RDQ. 1568 repeated as above recorded.)

A. Yes, an agreement was made.

RDQ. 1569. Have you any written evidence of that agreement?

A. Nothing in writing. I did not think it would be permitted to get out of Germany at that time.

MR. KRESEL: I object.

THE COURT: I am not sure from what he has said that he can answer that yes or no.

THE WITNESS: They would have taken it. It could not pass the English lines, I thought; they would have taken everything away from my brother.

MR. KRESEL: I object to that.

MR. ANDERSON: I consent to strike out the rest. The statement that it was not allowed to get out of Germany at that time will remain?

THE COURT: Yes. The remainder is volunteered and will be stricken out.

RDQ. 1570. Have you ever had in your possession in America any such agreement in writing?

A. No, I have never had the agreement. I had my brother's statement to me, that is all, of the contents of the agreement.

RDQ. 1571. Was the agreement so far as you were concerned for any period?

A. No, sir.

MR. KRESEL: Colonel, if you will remember, the witness testified here yesterday that it was for the life of the patent. Is it possible he now wants to say that that was not correct?

MR. ANDERSON: What is the meaning of the life of the patent?

MR. KRESEL: You know what the life of a patent is—

MR. ANDERSON: Certainly I do.

MR. KRESEL: And he knows what the life of a patent is.

MR. ANDERSON: Suppose it was for an indeterminate period and he construed it to be the life of the patent. That is the construction of the agreement. I am arguing with counsel instead of addressing your Honor.

THE COURT: That is all right, so long as it does not consume too much time.

MR. KRESEL: That is all. I am through, your Honor.

THE COURT: Of course, you will recall his answer of yesterday.

MR. ANDERSON: Yes, sir. Then I will ask him this question:

RDQ. 1572. It appears that you testified yesterday that the agreement was for the life of the patent. Were there any specific terms of agreement on the subject of period and, if so, state what they were?

MR. KRESEL: It now appears that this agreement is in writing. I object to this witness undertaking to state the contents of that agreement.

MR. ANDERSON: He has already stated it on cross-examination, I think.

MR. KRESEL: I beg your pardon, he did not state it on cross-examination.

THE COURT: Have you not two difficulties now, Colonel Anderson, the one presented by Mr. Kresel and also the further one that in his answer a moment ago, which you said I think need not to be taken down, that his brother had stated to him the contents of this document?

MR. ANDERSON: Yes.

MR. KRESEL: Which is hearsay.

THE COURT: Which is not only the statement of the contents of a written document, but also hearsay with respect to such a conversation.

MR. ANDERSON: I think your Honor's objection is well taken for the whole evidence on the subject. I think I will leave the matter right there. I did not mean to say your Honor's objection, I meant your Honor's suggestion.

I now offer in evidence a letter from the Treasury Department, Bureau of Public Health, dated March 14, 1919, addressed to Mr. Metz, signed by Rupert Blue, Surgeon General, which is offered in connection with Defendant's Exhibit, No. 23, on yesterday and ask that the same be read as Plaintiff's Exhibit 443, the letter being as follows:

THE COURT: Admitted under the same conditions as the preceding documents.

Received in evidence and marked "Plaintiff's Exhibit, No. 445." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1573. On cross-examination you were asked as to your visit to Germany in the year 1922 and your alleged meeting with certain gentlemen, Mr. Oppenheim and others who were then on their way to America. Will you state just what took place?

MR. KRESEL: Will you ask him to fix the date, please, as near as possible?

RDQ. 1573. (Continuing) Will you fix the date as near as you can that you met these gentlemen and state what took place, how you happened to meet them and what happened?

A. As near as I can fix the date, it was early in June. I was in Berlin and received a telegram to see Assessor Oppenheim who was leaving that night for London to come to America. I saw him for about fifteen minutes at his residence.

MR. KRESEL: May I interrupt a minute to ask whether the witness has the telegram?

RDQ. 1574. Have you that telegram?

A. I haven't it with me. It is a routine thing.

MR. KRESEL: If he hasn't it, will he state from whom it was?

A. (Continuing) It was from the Hoechst people, the Farbwerke people. I saw Dr. Oppenheim for a few moments, about ten or fifteen minutes at his residence. He was packing his bag to leave on a train for London. He was going over, he told me, in answer to a telegram that he had received from Washington attorneys that suits for the recovery of the license fees had to be claimed before July 1st, I think it was, or whatever date the law specified; and he was going over in connection with those suits. That is the only one I saw, the only gentleman I saw connected with that expedition until he came back from America some time in August—yes, August, I think it was. I didn't know the others were going.

RDQ. 1575. Was there anything said in connection with any suit against the Chemical Foundation for the recovery of these patents?

A. Not a word, sir.

RDQ. 1576. Had you at that time ever heard of any suggestion of bringing a suit for the recovery of the patents?

A. I can not recall having ever heard a suggestion with regard to that.

RDQ. 1577. How long were you abroad, Mr. Metz?

A. I was abroad, I believe, until September 6th. I sailed from Cherbourg. I was in Paris for quite a while with my family and I was in Switzerland. I sailed on September 6th and got home about the 15th of September, 1922.

RDQ. 1578. If you recall, state when you first

heard of any suggestion of proceedings by the Government to recover the patents here in controversy?

A. I received a telegram—

MR. KRESEL: I object to that. The question is when he heard it, just simply the date.

A. (Continuing) I can not recall. It was after it was begun, after the President's demand for the return of the patents.

RDQ. 1579. Did you ever suggest to any official of the Government of the United States that this suit be brought?

MR. KRESEL: I object to that. I object to it as an indefinite question. He either had conversations with somebody about it or did not. If he did, then of course, you can ask what the conversation was.

RDQ. 1580. Did you ever have any conversation with any officer of the Government of the United States in regard to bringing this suit before it was instituted; and if so, with whom and where?

A. I can not recall a single conversation. I don't think I had any with any official of the United States or anyone else before that time on this point, on the point of asking for the patents or the suit. I don't recall anything of the kind.

RDQ. 1581. I think you testified on cross-examination that your trade-marks salvarsan, neosalvarsan and novocain had been seized by the Alien Property Custodian or demanded by the Alien Property Custodian?

A. Yes, sir.

RDQ. 1582. Was any such demand ever made upon you personally?

A. I think there was; I am quite sure; in the list of trade-marks and so forth, it came.

RDQ. 1583. Have you ever demanded the return of those trade-marks?

A. Yes, sir.

RDQ. 1584. Have they ever been returned to you?

A. No, sir. I would like to qualify that. Demand was made on the Chemical Foundation by my attorney when he knew they had claimed them, as against the Alien Property Custodian, I meant to say. I didn't know they had them. Didn't consider it.

RDQ. 1585. Mr. Metz, you testified on cross-examination that you did not pay any money to the German Company, the then owner of these patents, for the right which you claim or allege to have obtained in 1916 to use the same or to manufacture thereunder. I am going to ask you this question which I will ask you not to answer until counsel can be heard. From your familiarity with this business, as indicated in the evidence which you have already given, and bearing in mind the evidence here disclosed as to conditions with respect to the exportation of salvarsan, neosalvarsan and novocain from Germany in 1916, would you regard the continued manufacture and sale of these articles under these patents in the United States, or in the exportation from the United States, when manufactured in the United States, of value to the owners of the patents?

MR. KRESEL: We object to that question, if your Honor please, object to it as to form if it is a question put to an expert, as I must assume it is.

MR. ANDERSON: It is a fair assumption.

MR. KRESEL: And upon the ground that it is not founded upon any facts in the case or either upon an assumption of facts. I recognize that you may assume a state of facts when you put a question to an expert, as I did upon my cross-examination of this witness. The question is based upon conditions in 1916, whereas the only materiality, if it has any materiality at all, must be directed to conditions in 1919, at the time when this sale was

made. It calls for the witness's conclusion as to what he believed was in the minds of Germans as to whether a certain situation was of value to them or was not of value to them. It does not call for this witness's estimate of the value of any particular thing such as the trade-mark or the patent. It is asking him to construe the frame of mind of the Germans as to whether they in 1916 believed that a continuance of manufacture here was of value to them. I do not think that that is the subject for expert testimony.

MR. ANDERSON: I beg your pardon, I thought you were through.

MR. KRESEL: I was going to add, if you will permit me, the ground urged, and further upon the ground that the testimony is for that reason immaterial and irrelevant, we object to it.

THE COURT: Before I hear you, Colonel Anderson, I will state my difficulty so you may reply to it. I am having this difficulty with respect to the agreement of December 5th, 1916, and the agreement of June, 1918, and the written document which did not come out of Germany—a confusion of the terms of those several agreements.

MR. KRESEL: Will your Honor permit me to give you in very few words the contents of those agreements?

THE COURT: I wish you would.

MR. KRESEL: First, the agreement of December 5th, 1916, was an agreement between the Dermatological Laboratories and Mr. Metz, the Farbwerke-Hoechst Company. By that agreement the Laboratories agreed to dismantle their plant in which they had been manufacturing a product.

THE COURT: I have that.

MR. KRESEL: You have that.

THE COURT: Yes. You need not state any

more about that. I have the terms of that agreement.

MR. KRESEL: Very well. The terms of the June, 1918 agreement between the persons who were conducting the Dermatological Laboratories, Drs. Schamberg, Raiziss, etc., and Mr. Metz—

THE COURT: I have that.

MR. KRESEL: Your Honor does not need anything further on that?

THE COURT: No. Colonel Anderson, it seems to me that this question is immaterial because the matter with which we are concerned and the issue to which it would be pertinent if relevant would be that of value at the time of the sale, would it not?

MR. ANDERSON: Yes, sir.

THE COURT: And that only. Then that value is ascertained by the conditions existing at the time of sale. I do not see the logical sequence in that connection between the business wisdom of the Germans permitting the manufacture here when they could not export from Germany and import into the United States, and the sale value of the salvarsan, neosolvarsan and novocain patents in 1919. If you think it is relevant I will take the answer without further discussion, or I will hear you.

MR. ANDERSON: I think that probably I should state to your Honor why I have asked the question, that your Honor may see why it is relevant. I have already indicated, and we shall contend here, that assuming the agreement of 1916 can be considered in this case—and it is all subject to objection from one side or the other—then it follows that the question on cross-examination was directed to one of two things, either to show that the right was of no value to manufacture in the United States or for the purpose of showing that the witness had

nothing that he paid for, paid any money for under this agreement, and that therefore the limitation alleged to have been created upon the patent use by this agreement gave to and would give to the owner of the patent or its successor no right to revenue which would come in.

THE COURT: Your question was what?

MR. ANDERSON: No right to revenue.

THE COURT: No, but your question?

MR. ANDERSON: My question was assuming that they could not export to the United States—I will put it that way if you wish—which the evidence here shows, assuming that there was a business in the United States which the evidence shows, assuming that the person manufacturing in the United States could export to other countries, which necessarily follows, then the value of maintaining that business during the period of suspension to the German owner was enormous.

THE COURT: I understand your respective theories, and if you want to put it of record you may do so.

MR. ANDERSON: Of course, it will be a debateable question, but there are going to be lots of them here, and I want to get the record in such shape that we can argue the reasonableness of the position. In view of the objection I will reframe the question, because I would just as soon put it the other way.

RDQ. 1586. Assuming that in the year 1916, at which time you testified as to some right acquired to manufacture under the salvarsan and neosolvarsan patents, the exportation of this product from Germany to the United States was substantially cut off by blockade and the export thereof from Germany to other countries was substantially cut off, and assuming that there were then large sales of this article in

the United States and other countries and a large demand therefor, would you as a person familiar with this business, as you have indicated in your testimony, regard the continuance of the manufacture in the United States, the sale of this article in the United States, and the exportation thereof to other countries from the United States during the period of such suspension of exportation from Germany owing to the conditions described, as of value to the German owner of these patents or his successor.

THE COURT: The question I assume, is subject to all objections which you have heretofore made to this or indicated with respect to other questions?

MR. KRESEL: Yes, your Honor.

THE COURT: The answer will be taken subject to your general and specific objections.

A. Yes, sir.

RDQ. 1587. From your familiarity with the business could you make any reasonable estimate of what you would regard the value of such a continuation of the business as I have described to be to the owner of the patent during the period which I have described, resulting from these conditions?

MR. KRESEL: Please just say yes or no.

A. Yes or no to the question? What is the question?

RDQ. 1588. What do you say?

A. Perhaps I can not say yes or no to the question.

THE COURT: That is, can you make an estimate of value?

RDQ. 1589. Just say whether you can, whether you think you can estimate its value?

A. No, not definitely. It would be enormous.

MR. KRESEL: May I have the latter part stricken out, your Honor?

THE COURT: Yes.

RDQ. 1590. Would you regard it as of great value, nominal value, or small value, without stating any figures?

MR. KRESEL: Object to it upon the grounds already urged; further upon the ground that it is a subject it seems to me which can not be valued. No one can undertake to say what, if any, value there is to such an ephemeral and fleeting thing as a desire to continue operations.

MR. ANDERSON: Good-will? I think it was a pretty valuable property. The Supreme Court of the United States has held it was.

THE COURT: That involves too many questions for me to discuss.

MR. ANDERSON: Yes. I do not want to discuss it.

THE COURT: It seems to me that your answer would not be of much value, because it would be vague and indefinite.

MR. ANDERSON: I concede that it possibly would be argumentative and I think probably it is better to argue it from the record than otherwise. I will therefore waive any answer to the question.

RDQ. 1591. Early in this examination we introduced in evidence certified copies of your registration of trade-marks "salvarsan," "neosalvarsan," and "novocain." You recall those, do you not?

A. Yes, sir.

RDQ. 1592. It appears in the evidence that these trade-marks were originally assigned to your American corporation, Farbwerke-Hoechst Company; were they not?

A. Yes, sir.

RDQ. 1593. And the abstract which I have before me also shows that they were assigned to the H. A. Metz Laboratories?

A. Yes, by the Farbwerke-Hoechst Company.

MR. KRESEL: Are they both in evidence, Colonel?

MR. ANDERSON: All in evidence, yes. Apparently the one assignment from Farbwerke to—

MR. KRESEL: I did not recall it. That is the reason I asked.

MR. ANDERSON: I will put that in evidence. In order to complete the record I now offer in evidence certified copy of assignment recorded July 24, 1918, from the Farbwerke-Hoechst Company, a New York Corporation, to the H. A. Metz Laboratories, Incorporated, a New York corporation, to be identified and read as Plaintiff's Exhibit, No. 446.

MR. KRESEL: Same objection that we raised to the others.

THE COURT: Received under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 446." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1594. Assuming, for the sake of this question that the law of the United States authorizes the registration of trade-marks at the Custom House, and when so registered prevents the importation of articles under such trademark names or trade names into the United States without the consent of the owner of the trade-mark, would that fact, in your opinion increase the value of American trade-marks, including the marks "Salvarsan," "Neosalvarsan," and "Novocain," so registered?

MR. KRESEL: We object to that upon the ground that unless it is for the purpose of having this witness change or modify his testimony as to the value of these trademarks, which he has already given, it is immaterial and irrelevant.

We further object upon the ground that what

the law of the land is is something that the Court will take judicial cognizance of, and that it is not proper to ask this witness as an expert upon values to base his opinion as to the value of a trademark merely upon the law as stated by counsel, assuming that counsel stated it correctly.

MR. ANDERSON: Unless I did state it correctly, in substance—I thought you were through, sir.

MR. KRESEL: I am not challenging the correctness of your statement. I am going to assume for the present that it is correct.

THE COURT: I do not follow the second point of your objection, Mr. Kresel, because it seems to me that this witness would have been entitled to place a value upon this trademark on various assumptions, although one of those assumptions would be a condition of fact that would be regulated by law, and this question is assuming that certain conditions existed which would be brought about by the operation of law.

But it seems to me, Colonel Anderson, that there is merit in the first point, particularly if carried a step further, and that is: This goes to values which you have gone into quite fully in your examination in chief, and that you are now covering not strictly in re-direct, but rather anew, although in slightly different manner, the same question into which you went in detail. However, if you want it, you may put it in the record.

MR. ANDERSON: I think your Honor's second suggestion is probably a good objection to this question. The value was gone into on the original examination, and to assume additional elements of value might reopen it and possibly make it subject to that objection. So I will leave that without an answer.

THE COURT: Question withdrawn.

MR. ANDERSON: The question will be withdrawn and I will ask this question:

RDQ. 1595. Have you ever undertaken to register your trademarks Salvarsan, Neosalvarsan, and Novocain, or either of them, in the Custom House of the United States?

A. Yes, sir.

RDQ. 1596. Was such registration allowed?

A. No, sir.

RDQ. 1597. Can you state, and if you have it in writing, produce the writing, why you were informed that you could not register the trademark?

MR. KRESEL: I object to that upon the ground that it is immaterial and irrelevant, that this Court can not undertake to pass upon the propriety of the refusal to register these trademarks or no. It is not a matter in issue here.

MR. ANDERSON: Your Honor please, I will state what I want to prove by this witness. I wish to show by the witness, in connection with the evidence taken on cross-examination, that the witness made an effort to register his trademarks which he claimed to own as an American citizen and that the Chemical Foundation, under the claim of ownership of those trademarks by virtue of the assignment here in question, objected at the Custom House to the registration thereof on the ground that they were the owners and upon that state of facts he was advised by the Collector of Customs that he could not register the trademarks. I think that is material as bearing upon this situation.

THE COURT: I will not pass upon the materiality, but will let you take your answer subject to the objection.

RDQ. 1597. (continuing) Just go ahead and state the facts.

A. The facts as stated are not quite correct, Colonel Anderson.

RDQ. 1598. I stated them the best I could.

A. I do not know that the Chemical Foundation objected, but because of the Patent Office record—

RDQ. 1599. You just state the facts as they were.

MR. KRESEL: Will you just pardon me a minute. Before the witness undertakes to state the facts, I ask you, Colonel, if there are any writings in the matter. If so, the writings speak for themselves, if the Court rules that the matter is material.

THE COURT: I am not going to rule that it is material.

MR. KRESEL: I withdraw that, your Honor. If the Court rules that the evidence should be taken, then I think the best evidence should be taken.

RDQ. 1600. If you have any writings, let me have them, please.

A. The trademark, the certified copy filed with the Custom House, is the one that would give the information, Colonel. You have those, I think. The registration was refused because of the records showing—

RDQ. 1601. Have you got any writings?

A. You have it here, the certified copies—I don't know the legal phrase—the record of the ownership in the Patent Office. It was on the strength of that that I was refused, because that showed the Chemical Foundation claimed ownership.

MR. KRESEL: I object to that.

THE COURT: Don't say what that shows.

A. (continuing) You have the record here, gentlemen. I haven't got the record.

RDQ. 1602. Did you receive any communication from the Custom House on that subject, and if so, what

was the communication? If you have it there, let me have it?

A. I don't know as I have it. You have got it. I think I gave it to you gentlemen. The substance was—

THE COURT: No.

A. (continuing) I have to find it then, if you please.

RDQ. 1603. You have not any writing with you on this subject?

A. Not here. There is such a paper in Washington, I know. I have seen it.

MR. KRESEL: Would you mind asking him the date of that communication?

RDQ. 1604. Have you knowledge of the date of the communication?

A. The communication will show. I haven't it offhand, but the papers can be submitted and found over here.

RDQ. 1605. Will you see if you can find it a little later and if so I will then introduce it in evidence in connection with this question. If it requires explanation, I will ask leave to ask the question.

A. I have the further correspondence on the subject though, Colonel.

RDQ. 1606. Let me see the further correspondence?

A. That the Custom House agreed—

THE COURT: Don't say what the papers showed.

RDQ. 1607. Is this the paper to which you refer?

A. Yes. This is the letter from the Treasury Department referring to the trademark.

RDQ. 1608. You have not the letter that I want. I will have to get a certified copy from the Patent Office at Washington. You spoke yesterday of "Nuisance value" which is a term that has been used here

a great many times. I would like to have you define what you mean by "nuisance value" of a patent?

MR. KRESEL: May I suggest, Colonel, that you ask him that question with reference to these patents, not generally.

MR. ANDERSON: I will ask him first for the definition.

RDQ 1609. You spoke yesterday of the nuisance value of patents covering dyestuffs and things of that kind. I will ask you what you meant; what is your definition of the term "nuisance value"? What do you mean by it?

MR. KRESEL: Colonel, I must object to that in the form that you put it. He did not testify yesterday generally as to the nuisance value of dye patents. He testified specifically yesterday that he had testified before a Committee of Congress that these patents here in question had only a nuisance value. Now, I recognize your right to ask him about that, but I do object to your going into a general discussion with this man about the nuisance value of patents with which we have nothing to do.

THE COURT: What you want, I take it, Colonel Anderson, is what he meant by the term "nuisance value" used by him in his prior testimony.

MR. ANDERSON: That is all; and I will put the question as his Honor stated it.

THE WITNESS: How is the question?

RDQ. 1610. What did you mean by the term "nuisance value" as used in your prior testimony taken on cross-examination and before the Committees?

A. The value inherent in a patent that prevents others from doing business with a competing product of any kind, although the owner did not do anything himself with it. That would be a nuisance value.

RDQ. 1611 Has the Chemical Foundation ever asserted against you the claim of ownership of salvarsan or silver salvarsan; and if you have it in writing, please let me have it.

MR. KRESEL: Do you mean the patents or trademarks?

MR. ANDERSON: No, I mean the trademarks.

A. Yes, sir.

MR. ANDERSON: I offer in evidence letter dated July 16, 1921, signed by Harry D. Nims addressed to H. A. Metz Laboratories, Incorporated, to be marked as Plaintiff's Exhibit No. 447. You will admit, Mr. Kresel, that Mr. Nims represented the Chemical Foundation?

MR. KRESEL: I think that is correct. Yes, he did.

THE COURT: Admitted subject to the general objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 447." (*See Exhibits, Vol. II, page 854.*)

MR. ANDERSON: The letter is as follows (reading).

MR. KRESEL: Was there any reply?

RDQ. 1612. Did you ever make any reply to that letter?

A. My attorneys took the matter up with the Patent Office.

MR. KRESEL: I ask that that be stricken out.

RDQ. 1613. Did you ever make any reply direct?

A Through my attorneys, undoubtedly.

MR. KRESEL: Has he a copy? Can he produce it?

A. (continuing) I think you have it there. My attorneys certainly made a reply.

RDQ. 1614. You have not the reply with you, have you?

A. No, sir. I have no reply with me. I haven't got it.

RDQ. 1615. Mr. Metz, you were asked yesterday by counsel for the defendant as to the amount of royalties paid on your sale of novocain under the Federal Trade Commission license?

A. Yes, sir.

RDQ. 1616. And I think that you made some explanation as to the royalties being less than five per cent. of the total sales?

A. Yes, sir.

RDQ. 1617. Have you in your possession one of the packages of novocain which you sold that represents the sample which you sold under those conditions?

A. Yes, sir; the novocain and the tablets made from novocain.

RDQ. 1618. In order to make your evidence clear, would you produce that?

A. Yes, sir (handing packages to counsel).

MR. ANDERSON: I offer in evidence two packages, one of novocain and the other of tablets, produced by the witness.

MR. KRESEL: I can not understand, your Honor, the purpose of such an exhibit. I can not understand what materiality and relevancy there can be to these issues.

THE COURT: How many exhibits have we now, Colonel Anderson? Four hundred and what?

MR. ANDERSON: 447.

THE COURT: I am wondering if the purpose that you have in mind is not this, that novocain as sold commercially or the product sold commercially as novocain was not 100 per cent novocain.

MR. ANDERSON: Quite so.

THE COURT: But that the commercial product contained other things besides novocain and that

this witness has testified that he paid royalties not on the product as sold but only on the percentage of that product which was novocain; isn't that it?

MR. ANDERSON: That is right. And he also said he testified that the large part of the expense or cost of the product sold was in the bottles and labels which were necessary; and I want to make his evidence perfectly clear.

THE COURT: All right; admitted.

MR. ANDERSON: I will merely identify this stuff and leave it on the record.

RDQ. 1619. Do you desire to in any way enlarge your testimony of yesterday on that subject to make it clear? And if so, state exactly how you came to make the returns of royalties on this novocain?

A. Yes, sir. On novocain as such we pay 5 per cent. That is the product under the license. Novocain tablets contain novocain plus other products, including superaniline, and other patented high priced products, and the cost of labor of making tablets and bottles is much greater than the novocain itself. We sell novocain to various manufacturers who make these specialties, tablets and solutions.

We therefore charge ourselves on a manufacturing account with the amount of novocain that goes into these tablets and pay royalty upon that novocain by arrangement with the Federal Trade Commission, and keep a separate account; and that was checked up by the representative of the Alien Property Custodian and the Commission, and I have those checked records here. They are not on our books. They are separate records for manufacturing purposes.

Might I add further on that, Colonel, in further elaboration?

RDQ. 1619. (continued) In response to the question, yes.

A. On account of the figures I gave. I had a telephone call to come down next morning with the figures, and I asked for them, and they gave me the totals instead of separating the specialties from the novocain. That was the cause of my statement as to those amounts. They are now separated.

RDQ. 1620. At an earlier stage I asked you a question in regard to your having obtained samples of the dyes used by other manufacturers, merchants or consumers in the United States. At that time counsel suggested that there was no testimony on the subject. I find at page 1754 of the record a letter introduced in evidence or read by counsel, addressed to you, which he states was from the Farbwerke Company in Germany, dated June 20, 1913. In that letter is a statement:

> "It is very interesting that you now receive the samples of competing factories on the part of dyers for examination. I can nevertheless imagine that an uncomfortable situation may sometimes arise for you because of it."

How did you come to procure those samples, and why?

A. The representative of the Textile Alliance, in their efforts to stamp out the abuses in the industry, had to have information as to the value of goods purchased by the various mills which came to them for advice. The samples from these mills were sent to me by their representatives for my opinion as to money value, on whether they were getting money value for the goods they paid for, and I made the tests and reported to them.

RDQ. 1621. Was the Textile Alliance the organization of which Mr. A. M. Patterson was President?

A. Yes, sir. And the reference to the uncomfortable position was that my competitors or some of my customers—

MR. KRESEL: I object to his interpreting the thoughts of the writer of the letter. He was not the writer.

THE COURT: No, he can not do that.

MR. ANDERSON: I think that is all I want to ask the witness.

RE-CROSS-EXAMINATION.

By MR. KRESEL:

RXQ. 1622. Mr. Metz, first I would like to straighten out with you the novocain figures as to which you have just testified. On your direct you gave, in answer to Colonel Anderson's questions, the amount of your sales of novocain for the years 1919, 1920, 1921 and 1922. Without repeating the exact figures that you gave as they now appear in the record, the total thereof was upwards of a million dollars?

A. Yes, sir.

RXQ. 1623. In addition to that you gave the amounts of royalties that you paid under your Federal Trade Commission licenses under those sales?

A. Yes, sir.

RXQ. 1624. I understand you to say that in point of fact the figures of your sales of novocain that you gave included other ingredients?

A. Yes, sir.

RXQ. 1625. Can you state the real amount of sales of novocain you made during those four years?

A. I have the five years—

RXQ. 1625. (continued) Five years?

A. From 1918 to 1922, inclusive.

RXQ. 1625. (Continued) Yes.

A. The actual amount of novocain sold as novocain and in the preparation was $477,961.98, on which the royalty was paid.

RXQ. 1626. Those were sales for a period of how many years?

A. 1918, 1919, 1920, 1921 and 1922—1922, up to and including July 1st, only.

RXQ. 1627. I noticed upon your re-direct examination you had available to you a lot of correspondence running way back to 1915, correspondence with officials of the Government and others. Have you your correspondence with Mr. Dieters that you have had with him this year?

A. I told you as I did not know if I had any copies. If I had I would be glad to bring them.

RXQ. 1628. I did not even ask you about copies only. Have you any correspondence with him, letters from him or copies of letters by you to him?

A. Yes, sir.

RXQ. 1629. Please produce them.

A. Colonel Anderson has them.

MR. ANDERSON: Here is the only one I have got. (Handing witness.)

THE WITNESS: I received a letter—

RXQ. 1630. No, please produce them, let me see them.

A. This is the correspondence and papers Colonel Anderson has came with them.

MR. ANDERSON: If your Honor please, I wish to call your attention to this fact, that I did not ask a single question in regard to this subject on re-direct, and I do not think that counsel has a right to reopen this subject for further cross-examination. I stated I was perfectly willing on any matter on which there was any doubt whether it was direct or re-direct to permit further cross-examination, but I did not consent and can not consent to reopening the cross-examination generally. Therefore I object to that question.

MR. KRESEL: I do not propose to reopen the cross-examination generally. Your Honor will recall that upon the cross-examination I asked this

witness for the correspondence and he said he would look it up. It seems to me that I have a right to ask him now the result of his search. I am not reopening the cross-examination.

MR. ANDERSON: I do not recall that, but if counsel makes that statement, of course he has a right to call for it.

MR. KRESEL: There is not any question about that, Colonel, that I asked the witness, and the witness will admit it.

THE COURT: I will take it any way, Colonel. There is now in the hands of Mr. Kresel a certain document produced by the witness, which of course Mr. Kresel can without further questioning mark for identification and stop there.

MR. ANDERSON: I only want to reserve the right to further examination.

MR. KRESEL: I shall not reopen the cross-examination. I am quite content to let it go as it is. There are three papers here and I will have marked the first one, for identification only for the present.

Marked for identification "Defendant's Exhibit I,"

MR. KRESEL: And the two annexed thereto as I-1 and I-2.

Marked for identification "Defendant's Exhibits I-1 and I-2."

THE COURT: Being the papers produced by the witness.

RXQ. 1631. Mr. Metz, you have produced one letter, a typewritten memorandum and a printed memorandum. Is that all of the correspondence that you ever had with Mr. Dieters?

A. That is all I had with me. There were other letters from him at various times which I have not got

and I do not think I kept. Those are all I had and when I looked at my papers I found them.

RXQ. 1632. Have you not now here in Court other letters from Mr. Dieters to you?

A. No, sir; with those papers came some copies of reports which I handed Colonel Anderson, which he mailed to me without—I did not even read them, affidavits and such that he has been talking about for two years.

MR. ANDERSON: I do not think I have those papers.

MR. KRESEL: I am not charging you with the possession of them yet.

MR. ANDERSON: Well, if I had them I would produce them.

RXQ. 1633. You say that you received from Deiters certain affidavits?

A. Yes, sir; copies of affidavits—claimed to be copies of affidavits.

RXQ. 1634. You mean not signed affidavits but copies?

A. I don't know, Mr. Kresel. They are here in Court. I did not even look at them. He had so much talk about affidavits that I never bothered with them after that.

RXQ. 1635. In addition to those affidavits as you call them, was there not other correspondence that you had with him?

A. I do not recall, Mr. Kresel.

RXQ. 1636. Have you not a single copy of any letter that you ever wrote to him?

A. Not with me, and if there is home, I will get it as I told you the other day.

RXQ. 1637. I have been questioning you on this subject now for three days, Mr. Metz, and apparently you have the matter in mind, because you thought it

wise to produce what you have now produced. Why have you not produced the balance?

A. Because I think I brought everything I have, and that is what I found in the papers I have. I have not been home since, Mr. Kresel, and no one else could find it but myself. I put things everywhere in my place and I have got to look for them. I will be very glad to do so.

RXQ. 1638. When you received from Mr. Deiters this bill which is in evidence now, you told me on cross-examination that you were indignant at any such demand made by this man and you thought you wrote to him. It is that letter that I would like you to produce.

A. If I have it, I certainly will, Mr. Kresel.

RXQ. 1639. But when? Can you get it by tomorrow morning?

A. No. No one will know where to find it. I have to look in a dozen places for it. I never kept those things together.

RXQ. 1640. All right. Mr. Metz, with the Court's permission I am going to ask you to get the copy of that letter written by you to Mr. Deiters and copies of all other letters written by Mr. Deiters to you and I shall ask the Court's permission to use those as soon as you can get those here?

A. I shall be very glad to comply with that request.

RXQ. 1641. Even though the Government's case should be closed.

A. Anything I have I shall be glad to send you, Mr. Kresel. Mr. Deiters probably has the originals if they were sent, and you can get them that way.

RXQ. 1642. Notwithstanding this unfounded demand that he made on you last October, you still continued in correspondence with this man Deiters, and continued to receive affidavits from him; is that right?

A. I can not help what he sent me.

RXQ. 1643. Did you or did you not?

A. He continued to send me stuff, yes, I will put it that way.

RXQ. 1644. All right. And you continued corresponding with him, did you not?

A. I do not know as I did correspond. If I did I will find the copies and bring them. He has the letters if I did. I do not recall, Mr. Kresel.

RXQ. 1645. And in such correspondence as you had with him do you not recall that you assumed toward him a friendly attitude?

A. I was very sorry for the man having lost his position at all times, yes, sir, because he tried to do the right thing, I think.

RXQ. 1646. Now look at this letter and tell me whether that is a letter that you wrote to Mr. Deiters on March 23, 1923? (Handing witness).

A. Yes, that is the acknowledgment of that letter in all probability.

RXQ. 1647. "Yes" is the answer?

A. That is the answer.

MR. KRESEL: May I have that marked for identification?

Marked for identification "Defendant's Exhibit J."

RXQ. 1648. I noticed yesterday that amongst the large batch of correspondence that was introduced, that you had in 1914 and 1915 concerning these dyes importations, there was a letter of introduction given to you by Secretary of State Bryan to Ambassador Gerard in Berlin?

A. Yes, sir.

RXQ. 1649. That was on the occasion of your visit in the latter part of 1914?

A. Yes, sir.

RXQ. 1650. At the same time you testified you carried a letter of introduction from Dr. Albert?

A. Yes, sir.

RXQ. 1651. Why do you not produce that one?

A. Because I left that in Germany with the people it was addressed to.

RXQ. 1652. Have you not a copy of it?

A. No, I never had a copy of the letter. Certainly not. It was a sealed letter presented to some one in Europe and I presented it.

MR. ANDERSON: I think, if your Honor please, I should note an objection to any examination on the matter introduced yesterday in the form of correspondence, on the ground that it was stated at the time it was introduced it was for the purpose of meeting the evidence on cross-examination and completing the evidence as to the relations of this witness to the matter of dye importations, which was brought out purely and solely on cross-examination. Your Honor will recall this was purely a value witness so far as the Government is concerned.

THE COURT: Yes, but is there not this difficulty with that situation, Colonel Anderson,—that it was introduced to offset certain of the testimony introduced in answer to questions of Mr. Kresel, and if this creates a new situation I take it that the re-cross-examination would be allowed.

MR. ANDERSON: I did not understand your Honor's rule on that subject. I want to state that I have not the slightest objection to re-cross-examination, provided that on any matter which is brought out I may have the right to re-examine again on those points. But I did not know that your Honor's rule was that way.

MR. KRESEL: I am through with that point; I am going to pass on to something else.

MR. ANDERSON: I did not know the rule of this Court.

RXQ. 1653. About this talk that you had with Mr. Oppenheimer, or Dr. Oppenheimer, in Berlin, the telegram which you received asking you to see Dr. Oppenheimer was from the Farbwerke-Hoechst Company, of Germany?

A. The Farbwerke vorm. Meister Lucius & Bruning, the German name. We speak of it as Farbwerke-Hoechst. The Farbwerke of Hoechst, we will put it that way, or somebody connected with it. I do not know what individual, but of that concern.

RXQ. 1654. You can produce the telegram?

A. I may have it in my papers and I will look when I get home and be glad to give it to you, Mr. Kresel, very glad to give it to you.

RXQ. 1655. You have not known him before that time?

A. No, sir.

RXQ. 1656. He was a total stranger to you?

A. Yes, sir. I knew that there was one Dr. Oppenheimer there.

RXQ. 1657. But he was a total stranger to you up to that time?

A. Yes, sir.

RXQ. 1658. And the telegram simply asked you to see him?

A. Yes, sir.

RXQ. 1659. Then you went to see him?

A. Yes, sir.

RXQ. 1660. Then I assume the telegram gave his address.

A. I do not know. I looked him up in the telephone book. I found him any way, and saw him.

RXQ. 1661. All you had was a telegram come to see Dr. Oppenheimer?

A. Of the Berlin Company.

RXQ. 1662. Of the Berlin Company?

A. He represented the Berlin Aniline Company.

RXQ. 1663. What do you mean, one of the Big Six?

A. One of the Big Six. He was their attorney.

RXQ. 1664. That is, one of the Big Six firms in Germany?

A. Yes, sir.

RXQ. 1665. So you went to see Dr. Oppenheimer and you had a fifteen minute talk with him?

A. About that, yes, sir.

RXQ. 1666. Only fifteen minutes?

A. Not much longer.

RXQ. 1667. He was in a great hurry?

A. Yes, sir.

MR. ANDERSON: May I suggest that this matter has been gone over fully in the cross-examination, and nothing further was brought out except to enlarge and complete his statement on that subject. I think that is hardly a subject for re-cross examination. We will be going on indefinitely if we beat the bush over and over again.

MR. KRESEL: No, we will not do that. On the contrary this is entirely a new matter. Your Honor will recall that I asked this witness whether he had conversations with Germans abroad with reference to the return of these patents. He testified first that he did not and then I read to him his testimony before the House Ways and Means Committee, and then he said that he had. He never once mentioned Dr. Oppenheimer in that connection.

THE COURT: You may take the aswer subject to the general and specific objections of counsel for the Government.

RXQ. 1668. You say that Dr. Oppenheimer was in a hurry, he was packing his bag, on his way to London. I want you to tell us as nearly as you can everything that was said between you and Dr. Oppenheimer on that occasion?

A. He told me that they had received a telegram from a firm of Washington attorneys, somebody and Brown; a gentleman from Cincinnati, a Judge, I do not recall the name at the moment, and Brown was the firm; that they would have to put in their claim under the law for the royalties on the German patents before or prior to a certain date, and on the strength of that telegram he was coming over here to take up the question and put in those claims if it was necessary. That was the only subject of conversation and the only conversation. And I gave him the address of Mr. Vandiver and Mr. Wilcox, told him they had studied the questions and to see them when he came here, and he did. That is all I had to say. The other things were purely personal, family matters and in general, but there was nothing else on this to discuss.

RXQ. 1669. My question was as broad as I could possibly make it, namely that you should state everything between you. Have you done that?

A. That is the substance of all there was to the best of my recollection. Yes, Mr. Kresel, that was the substance of the conversation. With regard to the suits for the licenses—for the fees.

RXQ. 1669-a. With reference to the trade-marks you have produced a letter from a lawyer named Nims on behalf of The Chemical Foundation. Have you not other correspondence with the Chemical Foundation concerning those trade-marks?

A. Not with me. I shall be glad to look it up when I get back and send you what I have.

MR. KRESEL: That is all.

MR. ANDERSON: You may stand aside, Mr. Metz.

THE COURT: Are you through with the witness, both sides?

MR. ANDERSON: I am through with him.

THE WITNESS: May I return home now?

MR. ANDERSON: It will be understood that he is discharged from the subpoena with the understanding if he finds any correspondence he will let Mr. Kresel have it as promised.

MR. KRESEL: No, I would rather have it, Colonel, that whatever correspondence he has he should submit to you, as he is your witness, and then, if you will, be good enough to let me see it.

MR. ANDERSON: I will do it with great pleasure. Can he be discharged from the subpoena?

MR. KRESEL: Yes.

MR. ANDERSON: On the general understanding that if we need you, Mr. Metz, you will return upon request at any time?

THE WITNESS: Yes, on notice.

THE COURT: Then you need not return unless requested by counsel for one side or the other.

THE WITNESS: Thank you. I want to thank you for your courtesy, your Honor.

MR. ANDERSON: We will ask permission now to take up the introduction of additional documentary evidence which was interrupted by this testimony. I am sorry that this has to be done.

THE COURT: Is that the remainder of your documentary evidence?

MR. GALLOWAY: We have the remainder ready and we shall put it in at this time.

MR. KRESEL: May I ask Mr. Metz one more question, if he has not already left.

RXQ. 1670. I direct your attention to the memorandum which is marked Defendant's Exhibit I for Identification, wherein I find this statement relating to the cases which the Department of Justice now has under investigation at Wilmington. That refers to this case, does it not?

A. I do not know what he refers to.

RXQ. 1670-a. Read it and just tell me.

A. (Examines letter). I presume that is this case, yes, sir.

RXQ. 1671. And also please look at the letter Defendant's Exhibit I-1 for Identification, in which I notice the concluding sentences as follows:

"I am enclosing herewith copy of all information which I have in the hope that you may find use for same at Washington."

A. That man wrote me that.

MR. ANDERSON: I did not object because I do not think the witness can interpret the letters. I am perfectly willing to let the letters go into evidence, but I do not think the witness's interpretation of letters is admissible.

MR. KRESEL: Oh, yes, the witness's knowledge as to these letters is admissible.

MR. ANDERSON: But the objection has been made in this case a number of times when an effort has been made to explain his correspondence, and I respectfully suggest that that correspondence should either be put in evidence or—

MR. KRESEL: I am going to put it in evidence now.

MR. ANDERSON: Then I move to strike out the answer of the witness as to the reference, and your Honor can reach your own conclusions on argument or in any other way as to what that correspondence means.

MR. KRESEL: Not at all. I object to that procedure, if your Honor please.

THE COURT: Are we not in this position: We can not tell possibly from incomplete correspondence the meaning of all the terms. If Mr. Metz produces the entire correspondence, the correspondence as a whole would speak for itself, but until that is produced is not testimony of the witness as to the meaning of terms in there, which

were not self-explanatory, pertinent? I do not mean pertinent, because I do not mean to say that any of the testimony is going to be pertinent, but proper.

MR. ANDERSON: Your Honor asked the question and I should certainly say no, sir, that it is a letter from someone else to him. What that person may have meant by that letter, which he said was not and does not appear to be in response to anything, where he is undertaking to interpret the other person's mental processes or state of mind, I quite agree is utterly immaterial. Yet I respectfully suggest that that evidence is wholly illegal and incompetent. What the letters mean is shown by the letters; let the letters go in, let the papers go in, I have not the slightest objection to it, subject to my general objections as to immateriality and irrelevancy and as outside of the direct examination, etc. But as to this evidence I would have to move to strike out because I regard it as a violation of the law of evidence for the reasons stated.

THE COURT: You have offered the letters?

MR. KRESEL: I am now offering them. I offer in evidence Defendant's Exhibit I for identification.

THE COURT: Admitted, subject to the Government's objections heretofore stated.

Received in evidence and marked "Defendant's Exhibit No. 26." (*See Exhibits, Vol. IV, page 2089.*)

THE WITNESS: May I ask your Honor a question?

(Witness speaks to Court.)

THE COURT: Will both of you hear what Colonel Metz has to say and make any inquiries you wish to make?

MR. ANDERSON: I beg to ask an additional question, if counsel will permit me.

MR. KRESEL: May I proceed with these exhibits?

THE COURT: Yes, you may proceed with these exhibits and make further inquiry afterwards.

MR. KRESEL: I read Defendant's Exhibit No. 26. (Reading).

Now I offer in evidence Defendant's Exhibit I for identification.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 27." (*See Exhibits, Vol. IV, page 2089.*)

MR. KRESEL: I now read Defendant's Exhibit 27 (Reading).

MR. ANDERSON: I want to make the further objection to the introduction of that memorandum that it is pure hearsay and has absolutely nothing to do with the issues of this case.

THE COURT: Is that a communication to the witness?

MR. ANDERSON: To the witness. It is a memorandum sent to the witness with this letter, it does not appear by whom made—but was sent to him by this man in Washington; and I shall show in a moment without his having any knowledge of it until he received it.

MR. KRESEL: And I have his reply thereto, which I shall read in a minute.

THE COURT: Your objection is noted, Colonel Anderson.

MR. KRESEL: I now offer in evidence Defendant's Exhibit I-2 for identification.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 28." (*See Exhibits, Vol. IV, page 2090.*)

MR. KRESEL: I shall not stop to read that. That appears to be an extract from the Congressional Record. I shall simply introduce it.

THE COURT: It was another enclosure in the same letter?

MR. KRESEL: Yes, in the same letter, your Honor. I now offer in evidence Mr. Metz's acknowledgment of the receipt of those papers, which was previously marked Defendant's Exhibit J for identification.

MR. ANDERSON: Same objection.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 29." (*See Exhibits, Vol. IV, page 2097.*)

MR. KRESEL: Now let me read that (Reading). That is all.

MR. ANDERSON: I will ask a question or two in view of that correspondence.

THE COURT: Is there a question pending?

MR. ANDERSON: No, sir.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 1672. I want to ask if you, prior to this correspondence knew anything of the matter that this Mr. Dieters wrote you about?

A. Mr. Dieters called me on the telephone.

MR. KRESEL: I object.

A. (Continuing) No. Yes; I will say yes, and qualify it.

MR. KRESEL: Wait a minute. Yes is an answer.

RDQ. 1673. Then say what you did know about these matters?

MR. KRESEL: About what matters?

MR. ANDERSON: About the matters referred to in the letter and correspondence.

A. Mr. Dieters called me on the telephone and said he had some information I ought to have. He wanted to come to New York to tell me. I said, "Don't you bother to come to New York to tell me anything. If you want to tell me anything, send it to me by mail." "Well, I don't dare mail this. I don't want my name to appear on it." I said, "Put it in a separate envelope and I will tell you if I received it."

I think they came in two separate letters; the copies I gave you and the statement in one letter, and the other letter in a separate one. That is my recollection. There was no use of him coming to New York. I would have had to pay his fare if he came. I said to him, "Don't bother me. If you have anything, send it to me. I don't care what they say about me." That was the substance of the communication.

He was always coming with things of that sort to me without my suggestion or request. He used to hang around Mr. Moses' office and was giving me things all the time, telling me why he lost his position, because he tried to put me on to facts, that they were trying to injure me in the Chemical Warfare Service.

RDQ. 1674. And that is the whole connection of this correspondence?

A. Absolutely. I gave him money purely on charity, because he lost his position. He had had $3,500 a year and he was out of a job, and his wife was sick, and a mortgage on his house, and he was ailing all the time. He was even in my office last week before I came down here and said they were going to subpoena him. I said, "Well, go down and tell the truth. Don't bother me with that stuff." Then he asked me, "You don't want anything?" "Not a thing." He said, "Will you give me some money to go home?" I gave him ten dollars, and I told him if they served him with a subpoena,

he should go and tell the truth; that is all he should do, and that is what I told him; and there are witnesses in my office who will testify that is what I said. That is all I told him, sir.

MR. KRESEL: Is that all?

MR. ANDERSON: That is all.

THE COURT: Does that conclude your case?

MR. GALLOWAY: I think probably we will have some other witnesses. We plan to bring those on this afternoon.